Warsaw, 9 October 2024
Opinion-Nr.: POLIT-MNE/515/2024 [NS]

FINAL OPINION ON THE LAW OF MONTENEGRO ON FINANCING OF POLITICAL ENTITIES AND ELECTION CAMPAIGNS

MONTENEGRO

This Final Opinion has benefited from contributions made by Mr. Fernando Casal Bértoa, Associate Professor in Comparative Politics and Member of ODIHR Core Group of Experts on Political Parties and Ms Tamara Otiashvili, Senior Legal Expert in Human Rights and Democratic Governance.

Based on an unofficial translation of the Law, as provided by the requesting body.

OSCE Office for Democratic Institutions and Human Rights

Ul. Miodowa 10, PL-00-251 Warsaw
Office: +48 22 520 06 00, Fax: +48 22 520 0605
www.legislationline.org

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Overall, the Law of Montenegro on Financing of Political Entities and Election Campaigns (the "Law") offers an elaborate framework for regulating political parties' and election campaigns' financing, although there are a number of gaps and areas for improvement. It addresses the management of financial assets for political entities' regular operations and election campaigns, outlines provisions for allowed and prohibited donations, and ensures some control and supervision of political finances. If effectively implemented, these provisions should help combat corruption, enhance transparency, and contribute to creating a level playing field for political parties. However, to ensure full compliance with international standards and OSCE commitments and ensure effective implementation, the Law would benefit from certain improvements and clarifications.

In particular, there are certain areas requiring attention to close potential loopholes that could be exploited to circumvent party and campaign financing regulations, especially with respect to third party financing, the regulation of in-kind-support, and ineffective sanction mechanisms. Additionally, there is a need to reassess the balance between public and private funding to ensure that the system of public funding for both statutory and campaign-related activities of political parties does not unduly advantage larger, established parties at the expense of smaller or newer political parties. Moreover, the Law should be refined to enhance legal clarity by using a consistent terminology throughout, while eliminating inconsistencies between different provisions of the Law and possible overlaps and incoherence with other legislation, especially Law on Political Parties and electoral legislation. As part of a broader electoral reform, but also from the perspective of campaign and party financing, the legal drafters should discuss the option of synchronizing the timing of local elections with a view to improve monitoring and oversight, reduce opportunities for fraud, decrease costs and increase transparency.

Lastly, consideration should be given to integrating gender aspects throughout the public funding mechanisms envisaged by the Law to better reflect the constitutional principle of equality between women and men and to promote and enhance the participation of women in political life.

More specifically, ODIHR makes the following preliminary recommendations to further strengthen the Law in accordance with international standards, OSCE commitments and good practices:

A. Regarding public funding of regular activities of political parties:

1. to evaluate public funding of regular activities of political entities and consider adjusting the respective amounts, with careful consideration given to balancing it with private funding; [para. 32]

2. to consider extending the eligibility for public funding beyond parties/entities represented in parliament or municipal assemblies, to ensure that non-parliamentary parties and newly established parties also become eligible; [para. 31]

B. Regarding pubic funding of election campaigns:

1. to consider increasing the percentage of pre-election public funding, while giving more weight to the number of votes in order to prove a minimum level of support received by a political party, below the electoral threshold for the allocation of a mandate in parliament; [para. 36]
2. to reconsider the deadlines for the pre-distribution of public funds by allowing for earlier disbursement shortly after candidate registration or submission of electoral lists, especially in case of regularly scheduled elections; [para. 38]
3. to review and consider decreasing the campaign expenditure limits and the amount of public funding allocated for election campaigns; [para. 42]

C. Regarding gender and diversity considerations when designing public funding mechanisms:

1. to clearly specify in the Law the types of activities that may be supported by public funds specifically allocated for financing parties' women's organizations to enhance full and free participation of women in political and public life on an equal basis with men; this indicative list may include establishment or enhancement of women party caucuses, associations or other similar structures as well as training for women candidates, programmes related to women's empowerment, relevant public awareness-raising and educational campaigns, promotion and support to women candidates' campaigning, measures to combat discrimination and violence against women in politics, etc.; [para. 48]
2. to strengthen the monitoring and oversight of spending of public funds dedicated to parties' women's organizations, while applying proportionate sanctions in case of non-compliance, including for failure to report on expenditure related to their women's organizations and for not directing such funds in accordance with the Law, while ensuring that the sanction mechanism does not prejudice women's organizations; [para. 49]
3. to consider allocating a part of public funding for election campaigns to those political parties who have nominated more women than the legal minimum, with a rank-order rule ensuring that women candidates are not placed too low on the party list, while further providing that if a woman candidate withdraws her candidature, she is replaced by another woman; [para. 51]

D. Regarding private funding of regular activities of political parties and election campaigns:

1. to define in the Law membership fees and sponsorships as contributions in order to prevent them from being used to circumvent donation limits; [paras. 59 and 63]
2. to provide more detailed regulation of in-kind support by private donors, while drawing a distinction between services provided free of charge or at a sub-market price for which an individual would not expect to be paid and that constitute individual political activity, from those that would be paid if the service were provided to other clients; [para. 68]

3. to regulate loans separately and limit the overall level of bank loans and credits that a party may obtain annually, potentially linking the overall amount of the loans to the percentage of total funding otherwise received, as well as require a comprehensive listing of loans in political parties' annual accounts, including detailed terms and conditions, while providing that unserviced loans and those left unpaid by the time of the final campaign finance report should be considered as donations; [para. 69]
4. to reconsider the possibility for a nominating party to donate to the campaign of a contestant without a limit and instead apply the same donation limits to the nominating party as the one applicable to contributions from legal entities or companies for financing of the election campaign, i.e., EUR 20,000; [para. 74]
5. to envisage in the Law reasonable and proportionate limitations as to the third-party financing of election campaigns, while providing clear criteria for distinguishing true electoral third parties that are in fact associated, directly or indirectly, with or under the control of a political party; the legal drafters should consider applying to third parties the same existing ceilings for donations and rules on spending as those applicable to political entities, establishing a registry of third-party campaigners for whom expenditure limits would apply, as well as regulating reporting requirements and sanctioning unregistered third-party campaigners for which the oversight authorities and the courts would establish a clear connection with a political entity; [para. 81]

E. Regarding general limitations/banned sources on funding:

1. to reassess, in the longer run, whether the outright prohibition on monetary donations from foreign sources remains justified and proportionate in light of the evolving country context, as well as, whether, some reasonable and balanced exceptions to allow donations from international political organizations/associations to support their national branches in party-building and education may be envisaged, as long as it is ensured that these contributions are not used to fund electoral campaigns or to advantage some parties at the expense of others; [para. 86]
2. to ensure that political entities and candidates shall be prohibited from using/receiving cryptocurrencies that do not allow the identification of people involved in the transactions and otherwise apply the limits for annual donations; [para. 87]

F. Regarding reporting requirements:

1. to provide greater details and clear rules on what must be reported annually, including donations received by a party, income acquired, loans and debts, as well as all expenditures; [para. 94]
2. to establish consistent and clear auditing obligations for political parties; [para. 94]
3. to require the reports to include sex-disaggregated data, including on candidates, expenditures and other forms of in-kind support, media coverage, as well as if feasible, data on ethnic origin and other protected characteristics, while ensuring the development of standardized, accessible, detailed and easily searchable formats of reporting; [para. 94]
4. to amend Article 51 of the Law to provide for the immediate publication of election campaign reports upon receipt (instead of after seven days) while ensuring they

remain available for a sufficient period of time to ensure proper public scrutiny; [para. 97]

G. Regarding media and political advertising:

1. to clearly state in the Law that airtime offered on private media must be offered to all parties at the same price while ensuring transparency regarding prices; [para. 103]
2. to consider introducing some restrictions on paid political advertising by the media if this is deemed justified and necessary in the country context to protect the democratic process from distortion and providing that the provisions of electoral legislation on free media time are sufficient to ensure that smaller or newly established parties/political entities can communicate their electoral programmes; [para. 103]
3. to mandate the Agency for Electronic Media to oversee the compliance of broadcast media with election-related provisions and granting it sufficient sanctioning and enforcement powers; [para. 103]

H. Regarding supervision and oversight:

1. to amend the Law to enable political entities to submit supplementary documentation during proceedings related to the violation of the Law and to provide sufficient time for them to contest initiated procedures; [para. 110]
2. to supplement the Law by providing political entities with clear and robust procedural safeguards to contest the decisions of the Agency for Prevention of Corruption within a reasonable timeframe; [para. 111]
3. to grant the Agency for Prevention of Corruption enhanced investigative and inspection powers and direct access to necessary databases to effectively oversee political party and campaign finance; [para. 112]

I. Regarding sanctions:

1. to redesign the sanctions for violations of the Law to ensure the effectiveness and dissuasiveness of sanctions and their proportionality to the seriousness of the violation, to ensure gradations, with the highest amount of fines being applied only for the most serious offences, while ensuring that political entities are given time to correct minor (formal) errors and taking into account frequency/recidivism, size/scale, mitigating circumstances when imposing sanctions; [paras. 114-115]
2. to consider amending the applicable legislation so that the Agency for Prevention of Corruption may impose administrative (lower) fines directly, while higher fines may be imposed by a court. [para. 116]

These and additional recommendations are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

Table of Contents

Annex: Law of Montenegro on Financing of Political Entities and Election Campaigns *(2020)*

I. INTRODUCTION

1. On 13 June 2024, the Vice President of the Parliament of Montenegro and Co-Chair of the Committee for Comprehensive Electoral Reform sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") a request for a legal review of the Law of Montenegro on Financing of Political Entities and Election Campaigns (hereinafter "the Law").
2. On 17 June 2024, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the Law to assess its compliance with international human rights standards and OSCE human dimension commitments.
3. In order to inform the work of the working group established under the auspices of the Committee for Comprehensive Electoral Reform to discuss the reform of the Law, on 31 July 2024, ODIHR published a Preliminary Opinion on the Law[1] that aimed at providing an initial assessment of the compliance of the legal framework with relevant international standards and good practices. The initial findings and recommendations outlined in the Preliminary Opinion were then presented and discussed during a country visit that took place on 4-6 September 2024. During the visit, ODIHR held a series of meetings with the Co-Chairs of the Committee for Comprehensive Electoral Reform, members of the working group in charge of reforming the Law, representatives of political parties, the State Audit Institution, the Agency for the Prevention of Corruption, non-governmental organizations (NGOs) and other stakeholders. ODIHR is extremely grateful to the representatives of the Parliament who have facilitated the organization of these meetings.
4. The Final Opinion aims to reflect the additional information and feedback received during these meetings to better tailor the recommendations to the local context and specific challenges. Following the Preliminary Opinion, the Final Opinion also seeks to elaborate further on several issues of interest, including the regulation of third-party contributions, the regulation and definition of non-financial contributions, the regulation of media advertising and political advertising, among others. ODIHR stands ready to continue providing legislative assistance by reviewing the draft amendments to the Law and other existing or draft legislation pertaining to political parties and electoral reform.
5. This Final Opinion was prepared in response to the above request. ODIHR conducted this assessment within its general mandate to assist OSCE participating States in the implementation of their OSCE human dimension commitments.

II. SCOPE OF THE FINAL OPINION

6. The scope of this Final Opinion covers the Law submitted for review. Thus limited, the Final Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing the financing of political parties and election campaigns.
7. The Final Opinion raises key issues and highlights areas of concern. In the interest of conciseness, it focuses on those provisions that require amendments or improvements rather than on positive aspects of the Law. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and

1 ODIHR, *Preliminary Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns*, 31 July 2024.

recommendations, as well as relevant OSCE human dimension commitments and international good practices, including the Joint Guidelines on Political Party Regulation issued by ODIHR and the Council of Europe's European Commission for Democracy through Law (hereinafter "Venice Commission").[2] Reference is also made to the relevant findings and recommendations from previous ODIHR election observation reports and legal opinions.

8. The Final Opinion also highlights, as appropriate, good practice from other OSCE participating States in this field. When referring to national legislation, ODIHR does not advocate for any specific country model but rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

9. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[3] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality[4] and commitments to mainstream gender into OSCE activities, programmes and projects, the Final Opinion integrates, as appropriate, a gender and diversity perspective.

10. In view of the above, ODIHR stresses that this review does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Montenegro in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

11. Political parties are essential in the democratic process and foundational to a pluralist society. They should be regulated in a manner that supports the rights to freedom of association and expression, as well as genuine and democratic elections. These rights are fundamental to the proper functioning of a democratic society.[5] To fulfil their core functions, political parties need appropriate funding both during and between election periods. At the same time, the regulation of political party funding and its transparency are essential to guarantee political parties' independence from undue influence of private donors, state and public bodies, as well as to ensure that parties have the opportunity to compete in accordance with the principle of equal opportunity.[6]

12. Fundamental rights afforded to political parties and their members are found principally in Articles 19 and 22 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR"), which protect the rights to freedom of expression and opinion and the right to freedom of association, respectively. Article 25 ensures the right to

2 See the ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020).
3 See *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Montenegro acceded to this Convention on 23 October 2006.
4 See *OSCE Action Plan for the Promotion of Gender Equality, adopted by Decision No. 14/04, MC.DEC/14/04* (2004), para. 32.
5 ODIHR and Venice Commission, *Joint Guidelines on Political Party Regulation* (2nd edition, 2020), para. 17
6 *Ibid*. para. 204.

participate in public affairs.[7] International commitments on financing political parties and election campaigns are also found in Article 7 paragraph 3 of the United Nations Convention against Corruption (hereinafter "UNCAC").[8]

13. Furthermore, the CEDAW is relevant to gender equality and diversity inclusion, in particular its Articles 4 (on temporary special measures to enhance gender equality) and 7 (on eliminating discrimination against women in political and public life). Article 29 of the UN Convention on the Rights of Persons with Disabilities (hereinafter "CRPD") also focuses on the participation of persons with disabilities in political and public life.[9]

14. At the regional level, Article 11 of the European Convention on Human Rights (hereinafter "ECHR") sets standards regarding the right to freedom of association, protecting political parties and their members as special types of associations.[10] Furthermore, the right to freedom of opinion and expression under Article 10 of the ECHR and the right to free elections guaranteed by Article 3 of the First Protocol to the ECHR are also relevant when reviewing legislation on political parties. The case law of the European Court of Human Rights (hereinafter "ECtHR") provides additional guidance for Council of Europe (hereinafter "CoE") Member States on ensuring that laws and policies comply with rights and freedoms guaranteed by the ECHR.

15. According to paragraph 7.6 of the 1990 OSCE Copenhagen Document, OSCE participating States committed to "*respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities*."[11] Other OSCE commitments relevant to political party regulation under the Copenhagen Document include the protection of the freedom of association (paragraph 9.3), the freedom of opinion and expression (paragraph 9.1) and obligations on the separation of the State and the party (paragraph 5.4). Additionally, Ministerial Council Decision 7/09 on women's participation in political and public life is of interest.[12]

16. These standards and commitments are supplemented by various guidance and recommendations from the UN, the CoE and the OSCE. At the international level, these include General Comment No. 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service interpreting state obligations under Article 25 of the ICCPR,[13] and the CEDAW General Recommendation No. 23: Political and Public Life.[14] Furthermore, the CoE Committee of Ministers' Recommendation (2003)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns (hereinafter "CoE Committee of Ministers' Recommendation Rec(2003)4"), as well as the Parliamentary Assembly of the

---

7 See *International Covenant on Civil and Political Rights* adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Montenegro ratified the Covenant on 23 October 2006.

8 See *UN Convention against Corruption*, adopted by the General Assembly on 31 October 2003, by resolution 58/4. The Convention entered into effect on 14 December 2005, and Montenegro ratified it on 23 October 2006. See also the *Additional Protocol to the Criminal Law Convention on Corruption*, adopted on 15 May 2003, ratified by Montenegro on 17 March 2008. Article 7(3) of the UNCAC requires that "*each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties*".

9 See the *UN Convention on the Rights of Persons with Disabilities*, adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. Montenegro ratified the Convention on 23 October 2006.

10 See the *Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms* entered into force on 3 September 1953.

11 See the *1990 OSCE Copenhagen Document*.

12 See the *OSCE Ministerial Council Decision 7/09*, 2 December 2009, Women's participation in political and public life.

13 See the *UN Human Rights Committee General Comment 25*: The right to participate in public affairs, voting rights and the right of equal access to public service, UN Doc. CCPR/C/21/Rev.1/Add.7.

14 See the CEDAW *General Recommendation No. 23*: Political and Public Life.

CoE Recommendation 1516(2001) on financing of political parties[15] are useful references.

17. The ensuing recommendations from the Final Opinion will also refer, as appropriate, to other nonbinding documents that provide further detailed guidance. These include the ODIHR and Venice Commission Joint Guidelines on Political Party Regulation,[16] the ODIHR and Venice Commission Joint Guidelines on Freedom of Association,[17] and Reports of the CoE Group of States against Corruption (GRECO) relating to the transparency of party funding in Montenegro.[18] Given the particular interest of the members of the working group in reforming certain specific elements of the Law, the following ODIHR publications and documents may be of particular relevance: the *ODIHR Note on Third Party Regulations in the OSCE Region* (2020);[19] the *ODIHR Guidelines for Observation of Election Campaigns on Social Networks* (2021); the *ODIHR Handbook for the Observation of Campaign Finance* (2015); and the *ODIHR Handbook on Media Monitoring for Election Observation Missions* (2012). The Final Opinion also takes into account the various reports from the European Commission, Council of Europe and ODIHR, which also refer and to findings and recommendations from non-governmental organizations, with respect to the need to reform the Law.[20]

2. General Comments

18. Articles 1 to 11 of the Law outline its General Provisions, detailing its purpose (Article 1), definitions (Article 2), and the use of gender-sensitive language (Article 3). They specify sources of financing (Article 4), name the Agency for Prevention of Corruption (hereinafter "the Agency") as the oversight body (Article 5), and distinguish between public (Article 6) and private sources (Article 7). Additionally, they set conditions for accessing budgetary sources (Articles 8-10) and private sources (Article 11).

19. The Law regulates the acquisition and management of financial assets for political entities' regular operations and during election campaigns, prohibits the use of state-owned resources during campaigns, and ensures the control, supervision, and auditing of such financing to maintain lawful and transparent operations. To ensure genuine competition between political parties, transparent and equitable rules for political party and election campaign financing are essential, both during and between elections. These rules should guarantee the independence of political parties, seek to enhance political pluralism, allow private contributions as a form of political participation, and regulate public funding to support political parties, prevent corruption, and reduce undue reliance on private donors. They may also be used to promote more diverse and gender-balanced political participation. Financing rules should foster opportunities for fair competition and ensure transparency of funding of political parties, candidates and third parties associated with political parties or candidates.[21] Party and campaign finance legislation

15 See *the Council of Europe Committee of Ministers, Recommendation Rec(2003)4* to member states On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns, adopted on 8 April 2003. See also *Parliamentary Assembly of the Council of Europe, Recommendation 1516(2001)* on financing of political parties, adopted by the Standing Committee, acting on behalf of the Assembly, on 22 May 2001.

16 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation* (2nd edition, 2020).

17 See the ODIHR and the Venice Commission *Joint Guidelines on Freedom of Association*.

18 See GRECO's, *all evaluation cycles for Montenegro*. Montenegro is a member of GRECO since 6 June 2006.

19 See *ODIHR Note on Third Party Regulations in the OSCE Region* (2020).

20 See, in particular, European Commission, *2024 Rule of Law Report - Country Chapter on the rule of law situation in Montenegro* (2024); Council of Europe, Horizontal Facility for Western Balkans and Turkey - Action against Economic Crime in Montenegro (AEC-MNE), *Technical Paper on the Assessment of the regulatory framework for political party and election campaign financing in Montenegro* (2017);

21 The reporting and transparency requirements that may be imposed on political parties are justified in light of their specific role and status, and their essential democratic functions, and should not be extended to apply to all associations, see *ODIHR Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called "Foreign Agents Laws" and Similar Legislation and their Compliance with International Human Rights Standards*, 25 July 2023, paras. 54-55.

should include key parameters such as: restrictions and limits on private contributions, a balance between public and private funding, and restrictions on the use of state resources. Additionally, there should be fair criteria for allocating public financial support, spending limits for campaigns, and requirements to increase transparency of party funding and the credibility of financial reporting. An independent regulatory mechanism and appropriate sanctions for violations are also necessary, along with limitations on foreign funding of political parties.[22] These issues will be discussed in greater details in the respective sections below.

20. Article 2 defines "political entities" as "political parties, coalitions, groups of voters and candidates for the election of the President of Montenegro". A political party is further defined as "*an organization of citizens registered with the Register of Political Parties maintained by a competent authority, in accordance with the law governing the establishment and operation of political parties*" (Article 2 para. 2 of the Law). This narrow definition suggests that only officially recognized political parties by means of inclusion in the official party register are concerned. Notably, the above definition envisaged by the Law does not correspond to the broader one provided in the Law on Political Parties of Montenegro, which recognizes as a party the organization of freely and voluntarily affiliated citizens for the purpose of accomplishment political goals with democratic and peaceful means. The ODIHR-Venice Commission Guidelines on Political Party Regulation define a political party as "*a free association of individuals, one of the aims of which is to express the political will of the people by seeking to participate in and influence the governing of the public life of a country, inter alia, through the presentation of candidates in elections*". **The legal drafters should consider aligning the definition of political party provided in the Law with the one provided in the Law on Political Parties of Montenegro, which is broader, to ensure consistency**.

21. Importantly, the term "political entities" is sometimes used interchangeably or incorrectly when referring to political parties and their specific obligations, as seen in Chapter VI of the Law, which addresses reporting requirements for political parties. **It is recommended to clarify and use the terms accurately to avoid confusion and ensure legal precision.**

22. Article 2 (4) also defines a "group of voters" as "*models of associations of voters for joint participation in elections, who arrange their mutual relations, including the appointment of a responsible person, by a contract verified in accordance with the law governing the verification of signatures, manuscripts and transcripts*". At the same time, **there is no clear regulation of the legal status of "group of voters" and their respective rights, obligations and responsibilities and this should be clarified**.

23. Article 3 of the Law provides that all expressions referring to natural persons in the masculine gender also apply to the feminine gender. It should be noted that international recommendations and good practice suggest that legislation should be drafted in a gender-sensitive manner, including by applying gender-sensitive drafting and terms.[23] The use of gender-sensitive language means that the language of a law should explicitly consider its audiences and make specific linguistic choices in each and every case, instead of using general clauses. As underlined in the 2023 ODIHR Preliminary Opinion on the

22 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 205.

23 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), para. 133; and ODIHR, *Preliminary Opinion on the Legal Framework Governing the Legislative Process in Montenegro*, 2 October 2023, para. 154. See also ODIHR, *Comments on the Law on the Assembly and the Rules of Procedure of the Assembly from a Gender and Diversity* Perspective (2020), paras. 105 and 107; and *Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation* (2017), p. 63. See also the UN Economic and Social Commission for Western Asia (ESCWA), Gender-Sensitive Language (2013); European Parliament, *Resolution on Gender Mainstreaming* (2019); Council of the European Union, *'General Secretariat, Inclusive Communication in the GSC'* (2018); and European Institute for Gender Equality's *Toolkit on Gender-sensitive Communication* (2018).

Legal Framework Governing the Legislative Process in Montenegro, *"[u]sing in the law a general clause that all its provisions apply equally to both men and women would lead in practice to the situation when inclusive alternatives will not even be considered by the drafters nor used throughout the text of the draft law*".[24] **In this respect, instead of using this general clause, preference should be given to the use of inclusionary alternatives making specific linguistic choices in all relevant provisions of the law, for instance by choosing gender-neutral forms and words in both male and female terms, as appropriate.**

24. In addition, the Law, in certain areas, lacks coherence and consistency. Important aspects of parliamentary and presidential elections are not equally covered or regulated, and similar articles are included under different headings, disrupting the flow and legal clarity. Additionally, Articles 36 to 46 provide detailed regulations on the use of administrative resources in campaigns. While these provisions are beneficial, they might be more appropriately placed in other laws, such as the election code, where other election campaign rules are discussed.

25. **It is, therefore, recommended to ensure coherence and consistency of the terminology throughout the Law as well as to eliminate possible overlaps and incoherence with other legislation, especially the Law on Political Parties and the Electoral Code, while ensuring the use of gender-sensitive drafting and terms. More generally, it will be essential to also review the Law on Political Parties, the Law on the Media and the electoral legislation to ensure consistency of the legal framework overall.**

26. During the country visit, several interlocutors mentioned the issue of constantly having simultaneous local election campaigns, which presents several challenges in terms of monitoring campaign expenditures, especially oversight by competent bodies, and the ability to clearly segregate, geographically, what should be accounted for. This may also be used as a loophole to circumvent election campaigns spending limits. The 2023 European Commission's Report on Montenegro also noted that "*Subsequent local elections across Montenegro resulted in an unusually long period of election campaigns, increasing the work of the ACA in monitoring the application of the Law on financing of political entities and election campaigns (LFPEEC)*".[25] Generally, it is shown that synchronizing local elections can reduce election fatigue, improve monitoring and oversight, reduce opportunities for fraud, decrease costs and increase transparency.[26] **As part of a broader electoral reform, but also from the perspective of campaign and party financing, the legal drafters should discuss the option of synchronizing the local elections.**

27. Finally, several interlocutors raised the issue of the risk of foreign influence over political parties and electoral processes. While some amendments to the Law could help reduce this risk, the reform of other pieces of legislation would also be needed, including but not limited to legislation pertaining to security, information protection, anti-corruption measures (with a focus on lobbying regulations), media laws, competition legislation and various other sectors (see also Sub-Section 5.1 *infra*).

24 ODIHR, *Preliminary Opinion on the Legal Framework Governing the Legislative Process in Montenegro*, 2 October 2023, para. 154.
25 See *Montenegro Report 2023*, European Commission - Directorate-General for Neighbourhood and Enlargement Negotiations, 8 November 2023, p. 36.
26 See e.g., Promoting Local Election Management as Part of an Electoral Cycle Approach, UNDP, 2013, p. 5.

3. PUBLIC FUNDING

3.1. Public Funding of Regular Operations of Political Entities

28. Article 12 defines costs for a political entity's regular operations. These include salaries for employees, hiring experts and associates, payroll taxes, social security contributions, administrative and office costs (including rent, utilities, and transportation), organization of meetings, events, and promotional activities, international activities, training for members and associates, public opinion polls, equipment procurement and maintenance, bank fees and other typical operational expenses.

29. According to Article 13 of the Law, funds from public sources for regular activities of political entities in the Parliament are set at 0.5 per cent of the State budget. Funds for regular activities of political entities in local assemblies are set at 1.1 per cent of the budget. For municipalities with budgets under five million euros, funding ranges between 1.1 and 3 per cent of the total planned budget, excluding capital budgetary assets, for the fiscal year. Of these funds, 20 per cent is allocated equally to political entities "*that win seats in the Parliament, and municipal assemblies respectively*" while the remaining 60 per cent is distributed proportionally to the total number of MP and councillor seats they have at the time of distribution. In addition, the remaining 20 per cent is distributed equally among political entities in the Parliament or municipal assemblies, proportional to the number of elected representatives of the less represented gender. In case of merging of two or more parties, allocated budgetary assets should stay with a party registered as the legal successor (Article 13(5)). If an elected member leaves or changes the membership of a political entity, financial assets remain with the political party (Article 13 (6)).

30. It is noted that the above allocation criteria for public funding tend to favour larger parties, particularly those with an existing mandate, potentially perpetuating the inability of small, newly formed or less wealthy parties to compete and function effectively.

31. At the same time, to promote political pluralism and ensure that voters are given the political alternatives necessary for a real choice, some funding should also be extended beyond those parties represented in parliament or municipal assemblies, to include all parties putting forth candidates for an election and enjoying a minimum level of citizen support.[27] This is particularly important in the case of smaller parties, or newly formed parties, which must be given a fair opportunity to compete with existing parties. It is good practice to enact clear guidelines on how new parties may become eligible for funding, while providing safeguards to ensure that this provision is not abused by political parties to register affiliated parties and benefit from public funding. **Therefore, a more generous system for the determination of eligibility for public funding should be considered, extending the eligibility for public funding beyond parties represented in parliament or municipal assemblies, to ensure that non-parliamentary parties and newly established parties also become eligible when they enjoy a minimum level of citizen support**. In this respect, limiting public funding to a high threshold of votes, and to political parties represented in parliament may be detrimental to political pluralism and limit the opportunities of small political parties;[28] hence, it is generally recommended to condition the provision of public support on attaining a lower threshold than the electoral threshold for the allocation of a mandate in parliament[29] (see also Sub-Section 3.2 on Public Funding of Election Campaigns *infra*).

27 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 242.
28 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 239 and footnote 218, and references therein.
29 *Ibid. ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, paras. 225 and 242.

32. Furthermore, during the observation of the early parliamentary elections in 2023, ODIHR noted that *"[s]uch a high amount of annual and campaign public funding [of parliamentary political parties], though, contributes to unequal financial opportunities of the contestants."*[30] While there are no established standards for the amount of public funds to be allocated to political parties, setting public funding at a meaningful level is crucial to ensure fair competition and effective functioning of all political parties. Legislation should thus put in place effective review mechanisms aimed at periodically determining the impact of current public financing and, as needed, altering the amount of funding allocated. As provided by the ODIHR-Venice Commission Guidelines on Political Party Regulation, such funding shall be allocated in a non-partisan way, based on "objective, fair and reasonable criteria". Furthermore, "*[g]enerally, subsidies should be set at a meaningful level to fulfil the objective of providing support, but should not be the only source of income or create conditions for over-dependency on state support*."[31] This is even more relevant since the ceiling on *private* donations for non-parliamentary parties in a single calendar year, as per Article 15 of the Law, is set at 10 per cent of the total amount of the funds designated by the state for the financing of parliamentary parties (see para. 56 *infra*). This would in practice disadvantage new/small parties without parliamentary seats. **Therefore, it is recommended to evaluate the allocation of public funding of regular activities of political entities and consider adjusting the respective amounts, with careful consideration given to balancing it with private funding.**

33. Article 13 provides for the **monthly distribution of public funds for the regular operation of political entities**, which creates an unnecessary administrative burden. **It is recommended to consider a longer time span**.[32]

RECOMMENDATION A.

1. To evaluate public funding of regular activities of political entities and consider adjusting the respective amounts, with careful consideration given to balancing it with private funding.
2. To consider extending the eligibility for public funding beyond parties/political entities represented in parliament or municipal assemblies, to ensure that non-parliamentary parties and newly established parties also become eligible.

3.2. Public Funding of Election Campaigns

34. The Law provides for direct public funding of parties' election campaigns. Allocating public funding in a clear, objective and equitable manner is essential to fight corruption and reduces the dependency of political parties on wealthy individuals. Such systems of funding should aim to ensure that all parties, including opposition parties, small parties and new parties, are able to compete in elections in accordance with the principle of equal opportunities, thereby strengthening political pluralism and helping to ensure the proper

30 See *ODIHR Final Report* on Early Parliamentary Elections in Montenegro, 11 June 2023, p. 15.
31 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 233. See also ODIHR and Venice Commission *Joint Opinion* on Draft Amendments to the Law on the financing of political activities of Serbia, adopted by the Venice Commission at its 100th Plenary Session, para. 29. See also *Joint Opinion* on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, para. 58.
32 See e.g., Recommendation 4 of the *CoE Horizontal Facility Technical Paper*.

functioning of democratic institutions.[33] In no case should the allocation of public funding limit or interfere with a political party's independence.[34]

35. For parliamentary and local elections, budget appropriations for election campaign costs are set at 0.25 per cent of the state budget (Article 20). Within this allocation, 20 per cent is evenly distributed among all electoral list submitters within eight days from the expiry of deadline for submission of the electoral lists. The remaining 80 per cent is distributed proportionally among submitters whose candidates have secured seats in the election, based on the number of seats won by each list. The same applies to snap elections (Article 22).

36. Similar to funding political parties' regular operations (see para. 30 *supra*), the Law seems to give more opportunities to larger parties, specifically those that have been elected, which might disadvantage newly established or smaller parties. As ODIHR has stated previously, there is no universally prescribed system for determining the distribution of public funding and each legislator may choose to require minimum thresholds of support for political parties to qualify for public funding. According to the ODIHR-Venice Commission Guidelines on Political Party Regulation, *"[w]hen developing allocation systems, careful consideration should be given to pre-election funding systems, as opposed to post-election reimbursement, as the latter can perpetuate the inability of small, new or less wealthy parties to compete effectively. A post-election funding system may not provide the minimum initial financial resources necessary to fund a political campaign.*"[35] While a proportional approach to the allocation of public funding based on a party's election results is generally considered to be equitable, it is in the interest of political pluralism to condition the provision of public support on attaining a lower threshold than the electoral threshold for the allocation of a mandate in parliament.[36] **It is thus recommended to consider a more equitable distribution of budgetary assets for financing of the costs of the election campaigns by increasing the percentage of pre-election public funding to support small and newly established parties, which might not have proper private assets to rely on. Additionally, with respect to post-election funding, more weight should be given to the number of votes proving a certain level of support received by a political party, instead of the seats obtained in Parliament.**

37. Article 28 introduces specific features for the allocation of public funds for presidential elections, where this funding amounts to 0.07 per cent of the total planned current budget, after subtracting capital and state fund budgetary assets for the relevant fiscal year. In single-round elections, these funds are allocated with 20 per cent distributed equally among all verified candidates within 10 days of list verification, while the remaining 80 per cent is shared among candidates who receive more than 3 per cent of the votes, proportional to their vote share. In two-round elections, the distribution remains the same for the initial 20 per cent, followed by 40 per cent allocated proportionally to candidates with over 3 per cent of votes in the first round. The final 40 per cent are divided between the top two candidates based on their respective vote percentages in the second round.

33 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 232.

34 Article 1 of the Appendix to *Recommendation Rec(2003)4 of the Committee of Ministers* to member states on common rules against corruption in the funding of political parties and electoral campaigns.

35 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 238. See also Article 1 of the Appendix to *Recommendation Rec(2003)4 of the Committee of Ministers* to member states On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns. See also ODIHR *Opinion* on Certain Provisions of the Law on Financing of and Control of Funding of Political Campaigns of Lithuania (2018), para. 29. See also *Joint Opinion on the Draft Constitutional Law on Political Parties of Armenia* (2016), para. 48 See also ODIHR *Final Report* on Early Parliamentary Elections in Montenegro, 11 June 2023; and *Report on the misuse of administrative resources during electoral processes*, adopted by the Council for Democratic Elections at its 46th meeting (Venice, 5 December 2013). See also *ODIHR Opinion* on the Draft Law on Political Parties of Mongolia (2019), para. 43, and ODIHR and Venice Commission *Joint Opinion* on the Law on Political Parties in Azerbaijan (2023).

36 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 239.

38. At the same time, disbursing funds within 10 days after candidate registration (or within eight days from the expiry of deadline for submission of the electoral lists, in case of parliamentary and local elections – see para. 35 *supra*) may not contribute to securing equity among all candidates and political parties. As provided by the ODIHR-Venice Commission Guidelines on Political Party Regulation, "*allocation should occur early enough in the electoral process to ensure equal opportunities throughout the period of campaigning*."[37] This is crucial because the official campaign period, excluding electronic media campaigns, begins immediately upon the announcement of elections. **Therefore, it is advisable to reconsider the deadlines for the pre-distribution of public funds by allowing for earlier disbursement shortly after candidate registration or submission of electoral lists, especially in case of regularly scheduled elections.**

39. It is important to note that public funding for political entities in Montenegro is substantial.[38] With approximately 542,468 eligible voters for the 2023 parliamentary election, the allocation of state funds for political financing is considerable. While there are no standardized practices for capping public funding, **implementing limits on specific types of expenditures and promoting more cost-effective voter engagement methods could mitigate this reliance on financial resources** (see more specific recommendations below regarding the different types of private funding)**. This, in turn, could lead to a consistent reduction in the required budgetary financing.**

40. According to Article 16 of the Law, election campaign costs refer to expenses incurred by a political entity during an election campaign. These expenses encompass various activities such as campaign rallies, advertisements, media presentations, promotional materials, public opinion polls, engagement of authorized representatives in electoral bodies, utility expenses, general administration costs, and transportation expenditures throughout the campaign period.

41. As provided by the ODIHR-Venice Commission Guidelines on Political Party Regulation, "*it is reasonable for a state to determine the criteria for electoral spending and a maximum spending limit for participants in elections, in order to achieve the legitimate aim of securing equity among candidates and political parties. Parties will also need to distinguish between electoral expenses and other party expenditures. The legitimate aim of such restrictions must, however, be balanced with the equally legitimate need to protect other rights, such as those of free association and expression. This requires that spending limits be carefully constructed to not be overly burdensome. The maximum spending limit usually consists of an absolute or relative sum determined by factors such as the voting population in a particular constituency and the costs for campaign materials and services*."[39] Whichever system is adopted, such limits should be clearly defined as contestants need "*a reasonable indication as to how those provisions will be interpreted and applied*."[40]

42. As noted in ODIHR's latest parliamentary election observation report, the campaign expenditure limit and the amount of public funding appear unreasonably high which may lead to excessive spending with a potential undue impact on voters.[41] **To enhance the equality of campaign opportunities, it is recommended to the legal drafters to review and consider decreasing the campaign expenditure limits and the amount of public funding**, assessing the maximum that a political entity could reasonably expect

37 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 239.
38 For example, public funding for political party operations and campaign constituted approximately EUR eight million in 2023.
39 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 248.
40 *Ibid.*
41 See *ODIHR Final Report* on Early Parliamentary Elections in Montenegro, 11 June 2023, p. 16.

to spend and the need to restrict spending sufficiently so that small parties are not excessively disadvantaged, among others.[42]

43. In addition to direct funding, the state may also provide indirect support to political entities in various other ways, such as providing tax exemptions for party activities, equitable access to free media airtime (especially when paid advertising is restricted during electoral campaigns), free postage for publications, and free use of public meeting halls for party activities. Article 47 provides tax relief for membership fees and contributions. **The current Law could be supplemented by provisions on free airtime, as a form of indirect public funding,** providing there are safeguards to ensure that this mechanism is not abused by smaller affiliated parties established for the purpose of supporting other contestants. The conditions of media coverage during election campaign may however be defined by other legislation, including the Media Law of Montenegro. With respect to media coverage, it is important that gender considerations are also applicable regarding such indirect public support.[43]

44. Article 24 of the Law requires each political entity, no later than one day after the registration of an electoral list, to open a dedicated bank account before starting their election campaign. At the same time, capturing the exact beginning of the electoral campaign by a political entity may prove challenging as some electoral contestants may try to use the pre-election campaign period to start campaigning without having to report funds collected and spent. As recommended in the most recent ODIHR election observation report, **monitoring of campaign expenditure should start from the call of elections and should include all forms of campaigning including campaign events and Google Ads, as well as other important platforms, to the extent possible**.[44]

45. Finally, the abovementioned ODIHR election observation report notes the problem of violence against women in politics, which is especially acute online and which deters some women from taking an active part in political life.[45] One way to address the issue could be to consider, in case the perpetrator is a contestant, **withdrawing a percentage of public electoral financing, as appropriate, from the perpetrator.**[46] **this could be added as one of the possible sanctions provided in the Law**. There should be an effective monitoring and sanction mechanism, involving an independent body to scrutinize the media and online space (see also para. 111 *infra* on the sanction of suspension or loss of budgetary assets for election campaign or for the financing of regular operations in case of non-compliance with the Law).

42 *Ibid.* See also Recommendation 10 of the *CoE Horizontal Facility Technical Paper*.
43 See ODIHR-Venice Commission, *Joint Opinion on the Draft Law on Political Parties of Mongolia* (2022), para. 99.
44 See *ODIHR Final Report* on Early Parliamentary Elections in Montenegro, 11 June 2023, p. 12.
45 *Ibid*., p. 15.
46 See e.g., *Inter-American Model Law On the Prevention,Punishment and Eradication of Violence Against Women in Political Life* (2017), Article 37 (g). See also ODIHR, *Addressing Violence Against Women in Politics in the OSCE Region Toolkit - Tool 1: Introduction to Violence Against Women in Politics* (2022).

RECOMMENDATION B.

1. To consider increasing the percentage of pre-election public funding, while giving more weight to the number of votes in order to prove a minimum level of support received by a political party, below the electoral threshold for the allocation of a mandate in parliament.
2. To reconsider the deadlines for the pre-distribution of public funds for election campaigns by allowing for earlier disbursement shortly after candidate registration or submission of electoral lists, especially in case of regularly scheduled elections.
3. To review and consider decreasing the campaign expenditure limits and the amount of public funding allocated for election campaigns.

3.3. Gender and Diversity Considerations

46. As mentioned above (see para. 29 *supra*), according to Article 13 of the Law, the remaining 20 per cent of public funding for the regular operations of political entities is distributed equally among political entities in the Parliament or municipal assemblies, proportionally to the number of elected representatives of the less represented gender. This funding, allocated for regular activities of women's organizations within political entities in the Parliament, amounts to 0.05 per cent (and 0.11 per cent for municipal assembly) of the planned total budget funds, excluding capital budget funds and state funds. For municipalities with budgets under five million euros, funding ranges between 0.11 and 0.3 per cent of the total planned budget, excluding capital budgetary assets, for the fiscal year. These funds are allocated on an equal basis and are intended to finance only women organizations within a political entity. This is in line with international good practice and recommendations.[47]

47. ODIHR reported during its observation missions that some parties failed to report any expenditure related to their women's organizations.[48] Although by law the lack of such information on use of the funds in a party's annual financial report should be sanctioned with discontinuation of public funding, none of the parties faced any consequences for their non-compliance.[49] During the country visit, several interlocutors reported the spending of the said funds by political parties for activities unrelated to the promotion of women's participation, as also noted in ODIHR election monitoring reports.[50]

48. **To enhance women's participation in political life, control over party spending of public funds dedicated to their women's organizations should be further strengthened and sanctions enforced. The Law should clearly specify the types of activities that may be supported by public funds for financing parties' women's organizations, with a view to enhancing full and free participation of women in political and public life on an equal basis with men. This indicative list may include establishment or enhancement of women party caucuses, associations or other similar structures as well as training for women candidates, programmes related to women's empowerment, relevant public awareness-raising and educational campaigns, promotion and support to women candidates' campaigning, measures**

47 See PACE Resolution 2111 (2016) "Assessing the impact of measures to improve women's political representation", para. 15.3.4, recommends to "*ensure that part of the public funding of political parties, when applicable, is reserved for activities aimed at promoting women's participation and political representation and guarantee transparency in the use of the funds*".
48 See ODIHR *Final Report on Early Parliamentary Elections in Montenegro*, 11 June 2023, pagep. 16.
49 *Ibid*.
50 See *ODIHR Final Report* on Early Parliamentary Elections in Montenegro, 11 June 2023, p. 16.

to combat discrimination and violence against women in politics, etc.[51] **The Law could also specify the types of expenditures it should not be used for, including to contribute to the salary of staff unrelated to the work of the women's organization or to generic activities such as conferences and meetings, unrelated to the promotion of women's participation.**

49. **It is noted that Article 14 of the Law provides for the transfer of the said public funding from the Ministry or local administration authority to the sub-account held by the political entity's women's organization. The said funding should be earmarked for gender equality initiatives**[52] **or directly and exclusively used by these women's organization. The monitoring and oversight of spending of public funds dedicated to parties' women's organizations should be strengthened and enforced, and proportionate sanctions should be applied in case of non-compliance, including for failure to report on expenditure related to their women's organizations and for not directing such funds in line with its purpose to meaningfully improve women's participation in political life**.[53] Articles 64-66 of the Law which provides the list of misdemeanour offenses and sanctions that may be imposed on political entities should be supplemented to specify the consequences of violating Article 14 of the Law (see also Sub-Section 8 on Penal Provisions *infra*). At the same time, **any sanction mechanism should not prejudice the women's organization, meaning should not impact the amount of public funding allocated to women's organizations, and should be imposed on the political entity**.

50. **Additional public financial incentives could be considered to further promote the political participation of women, such as conditioning an additional part of the public funding to a minimum level of representation of women in party leadership positions**[54] **or those political parties which have adopted gender action plans** (see also paras. 48-49 on public funding of election campaigns for women candidates). **It would also be beneficial to mention funds to support specific youth organizations, persons with disabilities, minorities within parties,** including for awareness-raising and educational campaigns among politicians, in the media and among the general public, about the need for the full, free and equal democratic participation in political and public life.[55] The above initiatives would align with international standards aimed at promoting gender equality and diversity in political participation.[56]

51. Seeing the under-representation of women in parliament and local assemblies, the legal drafters should consider introducing further incentives for political parties to enhance the representation of either sex in Parliament and local assemblies. This would be in addition to considering the introduction of a zipper system, requiring political parties to create a candidate list alternating between female and male candidates, as recommended by the

51 See *ODIHR Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region* (2016).

52 See ODIHR-Venice Commission, *Joint Opinion on the Draft Law of Mongolia on Political Parties*, CDL-AD(2022)013, para. 98, where it is emphasized that "*such earmarking was the only way to safeguard that public funding will be spent on the latter*".

53 See *ODIHR Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region* (2016).

54 See ODIHR-Venice Commission, *Joint Opinion on the Draft Law of Mongolia on Political Parties*, CDL-AD(2022)013, para. 26, referring to 40 per cent in line with good practices at the international level. also Council of Europe Committee of Ministers, *Recommendation Rec (2003)3 on the balanced participation of women and men in political and public decision-making*, 30 April 2002, preamble of the Appendix, which specifies that "*balanced participation of women and men is taken to mean that the representation of either women or men in any decision-making body in political or public life should not fall below 40%*".

55 See ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019); *Addressing Violence against Women in Politics In the OSCE Region: Toolkit* (especially Tool 3 for Political Parties) (2022); *Handbook on Promoting Women's Participation in Political Parties* (2014); OSCE High Commissioner on National Minorities, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999).

56 As embedded in the CEDAW, the CRPD, the Beijing Declaration and Platform for Action (United Nations, Beijing Declaration and Platform for Action), CoE Recommendation Rec(2003)3 of the Committee of Ministers to member states on Balanced Participation of Women and Men in Political and Public Decision Making (adopted on 12 March 2003), and *OSCE Ministerial Council Decision No. 7/09 on Women's Participation in Political and Public Life*, 4 December 2009. See also *International IDEA Funding of Political Parties and Election Campaigns*, p. 354. See also *ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain*, para. 70.

CEDAW Committee in its latest concluding observations of June 2024.[57] Such incentives could consist of **allocating a part of public funding for election campaigns to those political parties who have nominated more women than the legal minimum, with a rank-order rule ensuring that women candidates are not placed too low on the party list, while further providing that if a woman candidate withdraws her candidature, she is replaced by another woman**.[58] Other measures to promote the political participation of persons with disabilities could also be envisaged, including incentives for political parties to include persons with disabilities on their party lists and to provide direct financial support for reasonable accommodations for their candidates, or creation of a specific public fund for that purpose, or to support accessible electoral campaigns.[59]

RECOMMENDATION C.

1. to clearly specify in the Law the types of activities that may be supported by public funds specifically allocated for financing parties' women's organizations to enhance full and free participation of women in political and public life on an equal basis with men; this indicative list may include establishment or enhancement of women party caucuses, associations or other similar structures as well as training for women candidates, programmes related to women's empowerment, relevant public awareness-raising and educational campaigns, promotion and support to women candidates' campaigning, measures to combat discrimination and violence against women in politics, etc. .
2. To strengthen the monitoring and oversight of spending of public funds dedicated to parties' women's organizations, while applying proportionate sanctions in case of non-compliance, including for failure to report on expenditure related to their women's organizations and for not directing such funds in accordance with the law, while ensuring that the sanction mechanism does not prejudice women's organizations.
3. To consider introducing public funding mechanisms to support youth organizations, persons with disabilities, minorities within parties.
4. To consider allocating a part of public funding for election campaigns to those political parties who have nominated more women than the legal minimum, with a rank-order rule ensuring that women candidates are not placed too low on the party list, while further providing that if a woman candidate withdraws her candidature, she is replaced by another woman.

4. PRIVATE FUNDING

4.1. General Comments

52. In addition to public funds, political parties are entitled to private funding. Private funding is a form of citizen participation, enabling individuals to freely express support for a political party or candidate through financial or in-kind contributions. Except for sources of funding banned by relevant legislation (see Sub-Section 5 *infra*), individuals

57 See CEDAW Committee, Concluding observations on the third periodic report of Montenegro, CEDAW/C/MNE/CO/3, 6 June 2024, paras. 29-30.
58 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 188.
59 ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019), pp. 51 and 74-75.

should have the right to freely express their support albeit with reasonable limits on the total amount of contributions and transparent receipt of donations.[60]

53. According to Article 7 of the Law, private sources are: membership fees, contributions, income from legacies and loans from banks and other financial institutions in Montenegro. Article 7 last paragraph provides that "*Private sources […] may be raised exclusively through a specific bank account*". This is welcome as this should enable tracing the movement of funds.[61]

54. Moreover, the Law seems to overlook potential profitable streams that political parties may generate independently, such as proceeds from merchandise sales or party-related materials. While parties should be able to utilize these funds for their campaigns and operations, they should be carefully regulated to prevent them for being used to circumvent donation limits; all transparency, disclosure and contribution requirements, including donation caps, should apply, as appropriate.[62] **It is recommended to regulate such activities in the Law and specify permissible limits, to prevent circumvention of donation restrictions.**

55. It is noted that Article 34 prohibits giving or receiving contributions in cash or in the form of products or services through third parties (intermediaries), without distinguishing between the support to regular operations or to election campaigns by a political entity. In case of violation, a political entity may be subject to a fine ranging from EUR 10,000 to EUR 20,000 (Article 66 (42)) or the legal entity making such a contribution through intermediaries, to a fine ranging from EUR 5,000 to EUR 20,000 (Article 64 (13)). However, the Law does not specifically address the issue of the involvement in election campaigns of "third parties" i.e., "*individuals and organizations who are not legally tied to, or acting in co-ordination with, any candidate or political party, but who nonetheless act with the aim of influencing the electoral result*".[63]' As recommended by ODIHR, **the Law should be amended to comprehensively regulate third-party campaigning**[64] (see further recommendations on the regulation of the involvement of third parties in electoral campaigns in Sub-Section 4.7 *infra*).

4.2. Private Funding of Regular Operations of Political Entities

56. According to Article 15 (1) of the Law, private donations to finance regular political entities' activities, irrespective of whether they are from a physical or legal person, cannot exceed the total amount that a political entity has received from the state budget. For political entities without a parliamentary seat, which thus do not receive public funding, the ceiling on private donations, in a single calendar year, is set at 10 per cent of the total amount of the funds designated by the State for the financing of parliamentary parties (Article 15 (2)). Private person can donate to any political entity up to EUR 5,000 and a legal person up to EUR 20,000, annually (Article 15 (4)).

57. The above limitations on private donations include the determination of a maximum amount that may be contributed by a single donor, which should normally contribute to reducing the possibility of corruption or the purchase of political influence. The Law

60 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, paras. 209-213.
61 See *ODIHR Final Report on Early Parliamentary Elections in Montenegro*, 11 June 2023, p. 17. See also *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 212, which recommend that "*donations above a certain (low) amount shall be made through bank transfer, bank check or bank credit card, to ensure their traceability in terms of amount and sources*"
62 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 225.
63 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*. para. 218. See also *ODIHR Note on Third Party Regulations in the OSCE Region* (2020); and CoE *Recommendation Rec(2003)4 of the Committee of Ministers* to member states on common rules against corruption in the funding of political parties and electoral campaigns, Article 6, which provides that rules concerning donations to political parties, "*should also apply, as appropriate, to all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party*."
64 See *ODIHR Final Report on Early Parliamentary Elections in Montenegro*, 11 June 2023, p. 16.

envisages different donation limits for individuals on the one hand, and legal persons on the other, which reflects the practice in other countries. As noted in the Guidelines on Political Party Regulation, increasingly, states tend to ban donations from companies to political parties and election candidates, in which cases "these types of bans should also cover donations to legal structures connected to election campaigns and political parties" and *"[t]he types of companies that fall under such bans need to be delineated clearly, e.g., whether they cover all companies regardless of size and whether legal personalities made up of one self-employed individual also count*".[65] Depending on the country context, if donations from companies tend to create a distortion in the political process in favour of wealthy interests or to increase corruption, such a ban may be contemplated. Furthermore, it is generally good practice **to design donation limits to account for inflation, based on, for example, some form of indexation, such as a minimum salary value, rather than absolute amounts and this could be considered by the legal drafters**.

58. Political entities also determine membership fees, which should be disclosed to the Agency by the end of January each year (Article 15 (3) of the Law). These fees shall not exceed 10 per cent of an average monthly salary (Article 7). Income from membership fees and non-lucrative activities is tax exempt (Article 47). As per the ODIHR-Venice Commission Guidelines on Political Parties Regulation, "*the charging of membership fees is not inherently at odds with the principle of free association. At the same time, any membership fee should be of a reasonable amount*."[66] While political entities are free to set the membership fee at a minimum or zero level, they should be encouraged to provide for a **fee waiver in case of a financial hardship to ensure that political party membership is not unduly restricted or to offer a distinct level of membership for those unable to pay, thereby still allowing them to participate in party activities.**[67]

59. Membership fees are distinguished from contributions, which include payments made by natural persons and legal entities, companies and entrepreneurs voluntarily in favour of a political entity (Article 7). Since the limit to the amount of membership fees can be set at a different level by each political party (albeit not exceeding 10 per cent of an average monthly salary), there is a theoretical risk that the donations can be framed as membership fees in order to circumvent the legal limits on donations.[68] To avoid this, **it is recommended that membership fees be treated as contributions to prevent them from being used to circumvent donation limits**.[69]

4.3. Private Funding of Election Campaigns

60. Financing rules regarding political parties' campaigning should, in principle, follow similar key parameters as those envisaged for the funding of the parties' statutory activities (see paras 56-59 *supra*).

61. According to the Law, for all elections, political entities can raise funds from private sources only during the election campaign (Articles 23 and 29). In parliamentary and local elections, private funding for an electoral campaign cannot exceed three times the amount a party receives from the state budget (20 per cent from 0.25 per cent of the state budget in equal amounts to the political entities, see para. 35 *supra*). For presidential elections, private funding is limited to 0.07 per cent of the total planned current budget.

65 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 214.
66 *Ibid*. para. 208.
67 *Ibid*.
68 See *GRECO third evaluation report on Montenegro*, 3 December 2010, para. 68. See also *ODIHR and Venice Commission Joint Opinion* on the draft law on financing political activities of the Republic of Serbia, 20 December 2010, para. 15.
69 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 207.

62. It is assumed that the donation cap from private individuals and legal entities for financing an election campaign is the same as for the financing of political parties' regular activities, as also provided by Article 15 (EUR 5,000 for natural persons, and EUR 20,000 for a legal person) (see para. 56 *supra*). However, this is not explicitly stated in Article 23, which addresses private funding during parliamentary and local election campaigns. At the same time, such a provision is explicitly included in Article 29 of the Law, which regulates funds from private sources that a presidential candidate raises to finance the election campaign. **For legal clarity, it is recommended to include such donation caps explicitly under Article 23 or provide a cross-reference to Article 7 of the Law.**

63. Moreover, the Law should also address sponsorship, which may help political parties meet the costs of events, such as congresses and rallies, but may also become a channel for political funding intended to circumvent contribution limits. To prevent this risk, it would be advisable **to account all sponsorships as contributions, subject to the same limitations or bans as other contributions**.[70]

4.4. Regulation of In-kind Support

64. In addition to financial donations, which are regulated by the Law both in the context of regular operation and election campaigns (see Sub-Sections 4.2 and 4.3 *supra*), **the legislation should regulate in-kind support by private donors, both by individuals and by legal persons**. In-kind donations may be defined as, "*all gifts, services, or property provided free of charge or accounted for at a price below market value*."[71] Generally, this type of support should follow the same rules and be subject to the same restrictions as financial donations; for that purpose, the monetary value of in-kind donations should be determined based on market price and should be listed in funding reports.[72]

65. Article 7 specifies that contributions may include voluntary payments from individuals, legal entities, companies, and entrepreneurs to support a political entity. Additionally, it covers non-monetary contributions, such as services or products either free of charge or at preferential rates, favorable loans from financial institutions, and debt forgiveness. The Law further specifies that those non-monetary contributions must be assessed at their market value by the Agency and reported as income (Article 7). This places the responsibility on the Agency to oversee in-kind donations[73] and to adopt rules governing the calculation and reporting of in-kind contributions to political entities. However, **to ensure legal clarity, it is advisable to clearly define the general rules regarding calculation and reporting of non-monetary contributions in the Law itself, which can be further supplemented by secondary legislation.**

66. Moreover, clearer guidelines are needed for evaluating services or assets provided below market value in financial reports. Although *ad hoc* judgments will still be needed, using pre-existing cost estimates from relevant state agencies can help standardize assessments. This is particularly relevant for in-kind donations and the broader category of "services and products" as defined in Article 7, i.e., "*services or products to a political entity without compensation or under conditions whereby the entity is placed in a privileged position compared to other consumers*".

67. As provided by the ODIHR-Venice Commission Guidelines on Political Party Regulation,[74] free services or a sub-market price by individuals or legal persons for which

70 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 215.
71 *Ibid.* para. 216.
72 *Ibid.*
73 *Ibid.* paras. 216-217.
74 *Ibid.* para. 217.

the donor would expect to be paid by other clients should be counted as donations at their normal market value. Services voluntarily provided by those who would not normally expect to be paid might be regarded as individual political activity rather than as contributions. In this context, the CoE Committee of Ministers' Recommendation Rec(2003)4 is clear as to the concept of in-kind donations, which also comprises reduced rate or free services or use of equipment and facilities for which a fee is normally charged, cancellation of loans or loans granted on less than commercial terms.[75]

68. **Therefore, a more detailed regulation by the Law of in-kind support by private donors would be beneficial, while drawing a distinction between services provided free of charge or at a sub-market price for which an individual would not expect to be paid – considered as individual political activity, and those that would in principle be paid if the service were provided to other clients. For the latter, it is recommended that such support follows equivalent rules and is subject to the same restrictions as financial donations, including rigorous reporting requirements to ensure transparency and accountability and to align with good practice.**

4.5. Regulation of Loans

69. The Law provides that private sources include loans. Article 15 addresses limitation on funds from private sources with respect to political parties' regular operation (up to 100% of budgetary assets for those being represented in Parliament or 10% of 0.5% of total planned budgetary assets) and Article 23, with respect to elections campaign financing (thirty times the amount of 20% of 0.25% of the total planned budgetary assets). Given the specificities of loans, **it is recommended to regulate them separately and provide specific limitations in this respect**. During the country visit, concerns were raised as to the risk of major indebtedness of some political parties. The legal drafters could **consider providing requirements that parties' expenditures limits be balanced against their income, while limiting the overall level of bank loans and credits that a party may obtain annually, potentially linking the overall amount of the loans to the percentage of total funding otherwise received.**

70. Maximum transparency regarding loans and credits should also be required to ensure the independence of the political parties involved in the said transactions. According to ODIHR-Venice Commission Joint Guidelines on Political Party Regulation, in some states, political parties are required to provide information concerning outstanding loans, the corresponding awarding entity, the amount granted, the interest rate, and the period of repayment.[76] In such countries, specific measures were also taken to ensure that the reimbursement of loans complies with the terms with which they have been granted.[77]

71. Depending on the specific case and subject to legislation permitting donations and support from commercial entities, loans that are granted at advantageous conditions or even written off by the creditor should be treated as a form of in-kind or financial donation. Moreover, a loan might also be repaid not by the party or the individual candidate, but by a third person, in which case the loan also has the character of a donation.[78] Article 7 of the Law lists "*loans from banks and other financial institutions and organizations under more favourable conditions in regard to market conditions, as well as writing-off parts of debts*" among other types of private non-financial

75 See *Recommendation Rec(2003)4* of the Committee of Ministers of the CoE on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns.
76 *Ibid.* para. 260.
77 *Ibid.*
78 *Ibid.* para. 210.

contributions. At the same time, if the loans remain unpaid, they should be typically categorized as a donation.

72. **In this respect, it is important that political entities repay their loans and debts within a clearly defined timeframe.** The Law should explicitly provide that **unserviced loans and those left unpaid by the time of the final campaign finance report should be considered as donations. Such provisions would enhance accountability and ensure adherence to financial integrity standards**.

73. Additionally, there is a risk that the value of loans might not be accurately reflected in the financial reports of political entities; hence, **the Law should mandate comprehensive listing of loans in annual accounts, including detailed terms and conditions, to improve transparency and ensure accurate reporting of funds categorized as loans but potentially not intended for repayment (i.e., marking them as donations)**.[79]

4.6. Funding of Election Campaigns by a Political Entity or by a Candidate (Self-financing)

74. It is understood that contestants in elections in Montenegro tend to heavily rely on public funding sources, including the annual public funds of their nominating parties, which may donate to the campaign without a limit.[80] Generally, the public funding mechanism should be carefully designed to guarantee the utility of such funding, while at the same time ensuring that private contributions are not made superfluous or their impact nullified;[81] in addition, all parties, including small parties and new parties, should be able to compete in elections in accordance with the principle of equal opportunities.[82] The fact that the nominating party may donate to the campaign without a limit *de facto* favours larger parties and those represented in parliament. **It is therefore recommended to reconsider the possibility for a nominating party to donate to the campaign of a contestant without a limit and instead apply the same donation limits to the nominating party as the one applicable to contributions from legal entities or companies for financing of the election campaign**, i.e., EUR 20,000 (Article 29 of the Law); related sanctions for violating such limits should then be added to Articles 64-66.

75. As noted in ODIHR's latest election observation reports, the Law lacks regulation on **candidates' use of their own funds**.[83] It is recommended **to comprehensively regulate this issue in the Law.**

76. Finally, since fund distribution within a party between female and male candidates may not be even, and more generally, lack of access to financial resources often constitutes a barrier for women to run for office, higher donation limits for the nominating party or the candidate could possibly be considered when supporting women contestants. This could create an incentive for political parties to nominate and provide/ensure financial support to women candidates.

4.7. Third Party Involvement in Political Campaigns

77. As mentioned above, while the Law forbids donations or in-kind contribution in the form of goods or services to political entities through intermediaries (Article 34), the Law fails to clearly regulate the involvement of "third parties" in campaign activities and ODIHR

79 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 259. See also *Venice Commission Opinion* on the "draft law on amending and supplementing the Law no. 03/l-174 on the Financing of Political Entities in Kosovo."
80 See *ODIHR Final Report on Early Parliamentary Elections in Montenegro*, 11 June 2023, p. 15.
81 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 239.
82 *Ibid.* para. 232.
83 See *ODIHR Final Report on Early Parliamentary Elections in Montenegro*, 11 June 2023, p. 16.

recommended the Law to be supplemented in this respect.[84] The *ODIHR Note on Third Party Regulations in the OSCE Region* (2020),[85] which offers a comparative overview of how the issue is addressed in several OSCE participating States and provides concrete guidance and recommendations, may serve as a useful reference document for that purpose.

78. It is essential to extend some forms of regulation, including comparable obligations and restrictions as those applying to parties and candidates, to third parties involved in the campaign to ensure transparency and accountability and avoid the circumvention of funding limits.[86] Indeed, the lack of explicit regulation creates potential loopholes.

79. At the same time, regulators should take care to distinguish third parties that do not campaign in communication and collaboration with any of the contestants from affiliated persons or entities that are nominally separate from a party but in fact *are related, directly or indirectly*, to a political party or are *otherwise under the control* of a political party.[87] In general, third parties should be free to fundraise and express views on political issues as a means of free expression and public participation, and their activity should not be unconditionally prohibited.[88] In general, the involvement of third parties contributes to the expression of political pluralism and citizen involvement in political processes, thus a complete prohibition can be considered as an undue limitation of freedom of expression.[89]

80. Measures to address this phenomenon should be proportionate and consider the overarching goal of creating a level playing field for all political parties. As emphasized by the ECtHR in its ruling in *Bowman v. The United Kingdom*, such expenditures may not be banned, but they may be subject to reasonable and proportionate limitations.[90] The applicable legislation should set proportionate and reasonable limits to the amount that third parties can spend on promoting candidates or parties, ideally by applying existing ceilings for donations to political parties to these actors, as well. Imposing registration and strict reporting requirements for third-party contributions would also further enhance the effectiveness of campaign finance regulations.[91] This must be accompanied by a clear oversight mandate given to an institution with the necessary independence, powers and resources to effectively monitor compliance and enforce regulations, including as appropriately issuing sanctions or initiating sanctioning procedures.[92] Any decision on how to regulate third-party involvement should be reviewed regularly, ideally after each general election.[93]During the country visit, several interlocutors raised concerns with respect to the third party involvement in election campaigns and lack of regulation in this respect, and circumvention of financial regulations.

81. In light of the foregoing, **it is recommended to envisage in the Law reasonable and proportionate limitations as to the third-party financing of election campaigns, while providing clear criteria for distinguishing true electoral "third parties" that**

84 *Ibid.*
85 See *ODIHR Note on Third Party Regulations in the OSCE Region* (2020). See also the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*. para. 218.
86 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*. para. 256.
87 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*. para. 219.
88 *ODIHR Handbook for the Observation of Campaign Finance* (2015), p. 37.
89 For example, the ECtHR considered a case against the United Kingdom on whether a limit of GBP 5 on third-party campaign expenditures violated the right of freedom of expression under Article 10 of the ECHR. The Court ultimately concluded that the limit was set too low, but recognized the state's legitimate purpose in restricting such expenditures. See *Bowman v. United Kingdom*, judgment, ECtHR, no. 24839/94, 19 February 1998.
90 See ECtHR, *Bowman v. United Kingdom*, no. 24839/94, 19 February 1998.
91 See Council of Europe, *Recommendation Rec(2003)4 of the Committee of Ministers* to member states on common rules against corruption in the funding of political parties and electoral campaigns. Article 6: Rules concerning donations to political parties, "should also apply, as appropriate, to all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party."
92 *ODIHR Note on Third Party Regulations in the OSCE Region* (2020), pp. 35-36.
93 *Ibid.*

are in fact related, directly or indirectly, to a political party or are otherwise under the control of a political party from others. In this respect, the legal drafters should consider applying to third parties the same existing ceilings for donations to political parties and rules on spending as those applicable to political entities and regulating reporting requirements to safeguard against potential loopholes through which unlimited funding could otherwise be channelled and financial transactions be veiled.[94] One of the solutions could be the establishment of a registry of third-party campaigners for whom expenditure limits would apply.[95] There should also be a possibility to sanction unregistered third-party campaigners for which the oversight authorities and the courts would establish a clear connection with a political entity. **In any case, the Law should prescribe effective, proportionate and dissuasive sanctions for third-party campaigning and an effective mechanism for enforcement, including discontinuation of the unlawful campaign activity and removal of campaign materials**.[96]

RECOMMENDATION D.

1. To define in the Law membership fees and sponsorships as contributions in order to prevent them from being used to circumvent donation limits.
2. To provide more detailed regulation of in-kind support by private donors, while drawing a distinction between services provided free of charge or at a sub-market price for which an individual would not expect to be paid and that constitute individual political activity, from those that would be paid if the service were provided to other clients.
3. To regulate loans separately and limit the overall level of bank loans and credits that a party may obtain annually, potentially linking the overall amount of the loans to the percentage of total funding otherwise received, as well as require a comprehensive listing of loans in political parties' annual accounts, including detailed terms and conditions, while providing that unserviced loans and those left unpaid by the time of the final campaign finance report should be considered as donations.
4. To reconsider the possibility for a nominating party to donate to the campaign of a contestant without a limit and instead apply the same donation limits to the nominating party as the one applicable to contributions from legal entities or companies for financing of the election campaign, i.e., EUR 20,000.
5. To envisage in the Law reasonable and proportionate limitations as to the third-party financing of election campaigns, while providing clear criteria for distinguishing true electoral third parties that are in fact associated, directly or indirectly, with or under the control of a political party; the legal drafters should consider applying to third parties the same existing ceilings for donations and rules on spending as those applicable to political entities, establishing a registry of third-party campaigners for whom expenditure limits would apply, as well as regulating reporting requirements and sanctioning unregistered third-party campaigners for which the oversight authorities and the courts would establish a clear connection with a political entity.

94 *Ibid.* *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, paras. 218-221 and 255-256.
95 For example, in the Czech Republic and in Slovakia, third parties are obliged to register. Another good practice is when the definition of a third party is connected to donations received rather than the activities conducted by an entity (see UK and Ireland, for example).
96 *Ibid.*

5. BANNED SOURCES OF FUNDING

82. In an attempt to limit the ability of particular categories of persons or groups to gain political influence and impact the decision-making process through financial advantages, the legislation may set reasonable restrictions on private contributions, including the determination of a maximum level that may be contributed by a single donor (see Sub-Sections 4.1 and 4.2 *supra*). Furthermore, certain sources of funding can be banned by the relevant legislation.

83. The Law prohibits donations from foreign, anonymous, state-funded entities (legal entities and companies with a share of a state-owned capital), and non-governmental organizations, as well as religious sources, which is in line with international good practice.[97] Article 7 provides that "*a contribution shall be considered as accepted if it has not been returned to the contributor within 15 days from when it was received.*" Article 24 defines that in case the funds for financing of the election campaign raised from private sources exceed the allowed amount, "*surplus funds shall be transferred to the permanent bank account of the political entity or political entities, in accordance with the mutual agreement*".

5.1. Foreign Sources of Funding

84. Article 33 prohibits contributions from "other states", companies and legal entities outside the territory of Montenegro, and individuals without voting rights in Montenegro. This provision is generally consistent with Article 7 of CoE Committee of Ministers' Recommendation Rec(2003)4, which provides that, "*States should specifically limit, prohibit or otherwise regulate donations from foreign donors*."[98] As underlined in the ODIHR-Venice Commission Guidelines on Political Party Regulation, *"[t]his restriction aims to avoid undue influence by foreign interests, including foreign governments, in domestic political affairs, and strengthens the independence of political parties"*. During the country visit, the issue of foreign influence on electoral processes and public affairs was noted as a particular concern by several interlocutors. To avoid potential loopholes, the Law should specify whether donations made by foreign companies through national subsidiaries falls within the scope of the prohibition or not.[99]

85. While the ban on foreign sources of funding falls within the residual margin of appreciation of states, the proportionality of such a measure needs to be assessed in every specific cases, taking into account the country context and concrete aim pursued.[100] It is noted that many states allow for some exceptions to such an outright prohibition of foreign donations, and it is generally recommended that this should be regulated carefully to avoid an infringement with the right to freedom of association of parties active at the international level.[101] According to the ODIHR-Venice Commission Guidelines on Political Party Regulation, "*[s]uch careful regulation may be particularly important in light of the growing role of European Union Political parties, as set out in the Charter of Fundamental Rights of the European Union, Article 12(2)*".[102] Additionally, this type of

97 The Council of Europe *Committee of Ministers Recommendation Rec(2003)4* sets criteria for the prohibitions. Among others, Article 5 prohibits legal entities under the control of the state or other public authorities from making donations to political parties, Article 6 prohibits donations from all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party, and Article 7 prohibits or limits donations from foreign donors.

98 See *Recommendation Rec(2003)4* of the Committee of Ministers of the Council of Europe on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns, which states that "states should specifically limit, prohibit or otherwise regulate donations from foreign donors.

99 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*. para. 229.

100 *Ibid.* para. 229 and footnote 221. See also ECtHR, *Parti Nationaliste Basque – Organisation Régionale d'Iparralde v. France*, no. 71251/01, 7 June 2007.

101 See the *Venice Commission Opinion on the Prohibition of Financial Contributions to Political Parties from Foreign Sources*, CDL-AD(2006)014.

102 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*., para. 231.

regulation might permit some support from a foreign chapter of a political party, in line with the intent of paragraphs 10.4 and 26 of the OSCE Copenhagen Document, which envision external co-operation and support for individuals, groups and organizations promoting human rights and fundamental freedoms. This may be of particular importance for the purposes of party-building and education, as long as it is ensured that these contributions are not used to fund electoral campaigns or to advantage some parties at the expense of others. At the same time, the Guidelines also underline that the implementation of a nuanced approach to foreign funding may be difficult, and legislation should carefully weigh the protection of national interests against the rights of individuals, groups and associations to co-operate and share information, and the principles of party autonomy and political pluralism in general.[103]

86. Therefore, **in the longer run, the legal drafters should reassess whether the outright prohibition on monetary donations from foreign sources remains justified and proportionate in light of the evolving country context. Some reasonable and balanced exceptions may, at some later point in time, be envisaged to allow donations from international political organizations/associations to support their national branches in party-building and education, as long as it is ensured that these contributions are not used to fund electoral campaigns or to advantage some parties at the expense of others.**

87. During the country visit, it was noted that the Law does not regulate cryptocurrencies and it is understood that they are not currently regulated in Montenegro. Depending on the types of cryptocurrencies, some might have identification requirements that could facilitate greater monitoring and auditing than transactions using traditional currencies; some others may favour anonymity and the identity of the people involved in the transactions may not be traceable, meaning that they could allow illicit donations to enter the system – whether it is foreign, anonymous or other types of banned donations.[104] In the latter case, these cryptocurrencies should therefore be limited, if not outright forbidden, for parties and candidates to use. It must also be noted that there may also be potential problems for marginalized groups in accessing the technology required for these transactions and they may also further exacerbate the lack of access to campaign finance for women.[105] In light of this, **potential regulation of cryptocurrencies should be debated with all interested parties** (e.g., political parties, oversight agencies and the tech industry), **as well as women and other marginalized groups. In any case, political entities and candidates shall be prohibited from using/receiving cryptocurrencies that do not allow the tracking of the identification of people involved in the transactions, and otherwise, the limits for annual donations should apply.**

5.2. Ban on Donations from Private Donors Linked to State Business and from State-funded Entities and Use of State Resources

88. It is vital for the credibility of a democratic process that private donors are not linked to state business. According to Article 33 of the Law, "*legal entities, companies and entrepreneurs and related natural persons which, based on a contract with the competent bodies and in accordance with the Law, performed activities of public interest or concluded a contract through the public procurement procedure, in the period of two years preceding the conclusion of the contract, for the duration of the business relationship, as well as two years after the termination of the business relationship shall not give contributions to the political entities*". This provision is welcomed as it provides

103 *Ibid.* para. 231.
104 See e.g., *Cryptocurrencies and Political Finance*, International IDEA, Discussion Paper 2/2019, pp. 19-20, noting that those with an open ledger allow the identity of people involved in the transactions to be tracked, thereby facilitating the work of oversight agencies.
105 *Ibid.* p. 18.

a safeguard against corruption and interference with a political party's independence, if implemented effectively.[106] It is noted that, as reported during the country visit, in practice, there are very few or even no corporate donations.

89. The ban on donations from State-funded entities is also welcome and in line with international standards and recommendations.[107] Articles 36-46 of the Law further address various aspects of the use of administrative resources during electoral campaigns. The detailed and specific prohibitions on utilizing state and municipal resources clearly aim to address concerns regarding the misuse of public resources.[108] During the country visit, it was noted that the ban on contracting new public employees after the call of elections is generally circumvented and numerous public employment contracts were issued in the election period (mis-)using the exception provided by law for fixed term and temporary employment contracts to "ensure the smooth and regular functioning of state bodies". In the 2023 Election Observation Reports, ODIHR recommended to the Agency for the Prevention of Corruption to publish relevant information on public employment in a user-friendly format, to enable meaningful public scrutiny.[109] **While these provisions are appreciated, such restrictions should also be prescribed by other laws covering electoral campaigns.**

RECOMMENDATION E.

1. To reassess in the longer run whether the outright prohibition on monetary donations from foreign sources remains justified and proportionate in light of the evolving country context, as well as whether some reasonable and balanced exceptions to allow donations from international political organizations/associations to support their national branches in party-building and education may be envisaged, as long as it is ensured that these contributions are not used to fund electoral campaigns or to advantage some parties at the expense of others.
2. To ensure that political entities and candidates shall be prohibited from using/receiving cryptocurrencies that do not allow the identification of people involved in the transaction, and otherwise apply the limits for annual donations.

6. TRANSPARENCY OF POLITICAL PARTY AND ELECTION CAMPAIGNS FINANCING

90. Strengthening the requirements that increase the transparency of party funding and credibility of financial reporting are important means to avoid undue influence from unknown sources. Any system for financial allocation and reporting should be designed in a way to ensure transparency, consistent with the principles of the UNCAC and the CoE Committee of Ministers' Recommendation Rec(2003)4.[110] The ODIHR-Venice

106 See Article 1 of the *Appendix to Recommendation Rec(2003)4 of the Committee of Ministers* to member states on common rules against corruption in the funding of political parties and electoral campaigns

107 See e.g., the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 214, which provides: "states should prohibit legal entities under the control of the state or of other public authorities from making donations to political parties"; and CoE *Recommendation Rec(2003)4,* Article 5(c).

108 The *2016 ODIHR and Venice Commission's Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes* provide that *"[r]espect for the principles outlined below is essential for preventing and responding to the misuse of administrative resources during electoral processes. Formal, substantive and procedural principles are cumulative prerequisites intended to ensure the foundations of a legal framework to regulate the use of administrative resources."*

109 See e.g., *Montenegro - Early Parliamentary Elections, 11 June 2023 - ODIHR Election Observation Mission Final Report*, p. 17.

110 See Article 7.3 of the UN Convention Against Corruption. See also, *Recommendation Rec(2003)4* of the Council of Europe Committee of Ministers to member states on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, Appendix, Article 3.

Commission Guidelines on Political Party Regulation also note that transparency in party and campaign finance is important to protect the rights of voters and to prevent corruption.[111] In view of the specific role and functions played by political parties in the proper functioning of democracies, the general public may be deemed to have an interest in being informed about the activities and funding of political parties, and of having them being monitored and sanctioned in case of irregular expenditure[112] Voters must have relevant information on financial support given to political parties in order to hold parties accountable. At the same time, regulations should not place an undue burden on political parties, candidates and oversight bodies. Transparency measures should also be partly achieved by the existing reporting requirements.

6.1. Formal Requirements

91. According to Article 24 of the Law, each political entity, no later than one day after the registration of an electoral list, must open a dedicated bank account before starting their election campaign. If they decide to start campaigning before registration, the account must be opened earlier – before the start of the campaign. A political entity shall inform the Agency within three days from the day of opening the bank account. In case of coalitions, only one political list, chosen by mutual agreement of all parties involved, shall open an account. Contributions from other parties in the coalition will not be considered as contributions or income for the political entity that opened the account. Similarly, for a group of voters, a designated individual must open an account. In both cases, the designated party or individual is responsible for submitting financial reports. Political entities shall close these accounts within 90 days after the announcement of election results and provide a proof of the closure to the Agency. Similar rules apply for the presidential elections (Article 30). All expenses in relation to the campaign must be covered under these accounts. This measure clearly aims to ease the supervision task of the Agency and to enhance the comprehensiveness of financial transactions reported in the campaign finance reports.

92. Each submitter of the electoral list must designate a responsible person accountable for expenditure and reporting (referenced in Articles 27 and 32). While this designation occurs the day after candidate verification for presidential elections (Article 32), the Law does not specify the timing of this appointment for parliamentary and local elections. This lack of clarity may lead to varying interpretations and applications of the Law, which is critical given that this person bears responsibilities that could result in substantial penalties for non-compliance**. It is thus recommended to amend the Law to specify the exact timing for appointing the responsible person for parliamentary and local elections.** Clarity in these provisions is crucial to ensure consistent interpretation and application of the Law, particularly considering the significant obligations and potential sanctions associated with this role.

6.2. Reporting Requirements

93. According to Article 48, a political party is obliged to submit a report ("statement of accounts and the consolidated financial statement") with the State Audit Institution and the Agency annually no later than by 31 March, both in hard copy and electronically. This report includes financial assets and reports, as well as assets of all legal entities and companies it founded, and shall cover both the election campaign and regular operation. In addition, a political party shall keep the accounting records of revenues, property and expenditures by origin (separately for assets from public and private sources), the amount

111 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 247.
112 See European Court of Human Rights, *Cumhuriyet Halk Partisi v. Turkey*, no. 19920/13, 26 April 2016.

and structure of revenues, property and expenditures, in accordance with the regulation of the state administration body in charge of financial affairs (Article 48). The Agency has the duty to publish the Annual Report on its website, within seven days from the day it is received (Article 48).

94. Political parties should be mandated to submit annual disclosure reports to the appropriate regulatory authority outside of campaign periods. It is positive that record-keeping requirements are in place, which mandate political actors to maintain detailed accounts of revenue sources, amounts, and structure. However, while these aspects can be regulated through ministry directives or other laws, **the current Law lacks clear rules and specific guidelines on reporting formats and additional details**. Consequently, it is unclear how detailed the required annual account and expenditure returns are. As provided by ODIHR-Venice Commission Guidelines on Political Party Regulation, reports should clearly distinguish between income and expenditures. Further, reporting formats should include the itemization of donations into standardized categories as defined by relevant regulations and should be easily accessible and user-friendly and not overly burdensome, while also allowing the relevant data to be processed electronically afterwards."[113] Disclosure requirements for political financing are essential policy instruments for achieving transparency. **It is, therefore, recommended to supplement the Law to provide greater details and clear rules on what must be reported annually, including donations received by a party, income acquired, loans and debts, as well as all expenditures, and to establish consistent and clear auditing obligations for political parties. It is also recommended to require sex-disaggregated information about party leadership, membership, and activities carried to promote the participation of women in public life and related expenditures, among others. Enhancing these reporting requirements will increase the transparency of political party financing.** It is noted that according to Article 9 of the Law on the State Audit Institution, the SAI "*shall decide independently regarding the audited entities, subject to audit, scope and type of audit, time and method of auditing*".

95. According to Article 50, a political entity must prepare a final report detailing the origin, amount, and structure of funds from public and private sources raised and spent on the election campaign. This report, along with supporting documentation, must be submitted to the Agency within 30 days of the election in both hard copy and electronic form. These reports must itemize the total amount of funds raised, distinguishing between budgetary assets and private sources. Additionally, bank statements showing all revenues and expenditures from the relevant accounts, from their opening until the report's submission, must be included.

96. In addition, a political entity shall submit a report to the Agency on the contributions of legal and natural persons every fifteen days during the election campaign (Article 53), and an interim report on election campaign expenses five days before election day (Article 54). It is assumed that reporting also includes obligations under Article 16, which obliges a political entity to submit a report to the Agency on media advertising during the election campaign. If so, **this could be explicitly stated in the Law. It would also be advisable to require the reports to include sex-disaggregated data, including on candidates, expenditures and other forms of in-kind support, media coverage, as well as if feasible, on ethnic origin and other protected characteristics**.[114] Especially, the report on media advertising mentioned in Article 16 paras. 3-4 of the Law should also provide sex-disaggregated information about the media coverage of contestants.

113 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 260.
114 See *ODIHR Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region* (2016), pp. 68 and 71.

97. In all of these instances, the Agency determines the form and content of these reports. The Agency is also required to publish the reports on its website within seven days (for the reports report on the origin, the amount and structure of the funds from public and private sources raised and spent on the election campaign, as well as for the integrated reports in case of joint election campaign - Articles 51 and 53) and within 24 hours (for the interim report on the expenses of the election campaign as per Article 54) of receipt respectively. While the current provisions requiring publication of the reports are commendable, the deadline of seven days currently provided is unduly lengthy and does not fully ensure a prompt disclosure of financing information prior to the election day. Therefore, **it would be advisable to allow the publication of the reports immediately upon receipt, instead of after seven days**. **All reports should be published in a timely and accessible manner for an extended period of time. In this respect, consideration could be given to timely developing standardized, accessible, detailed and easily searchable formats of reporting, that would also support civil society and other interested stakeholders to review political party finances and contribute to an informed electorate**.[115] Measures should also be taken to enable the Agency for Prevention of Corruption to identify donations provided by public contractors, including by means of cross-checking donors against a digital database of public contractors.[116]

98. The Law does not specify how long financial reports shall remain on the website of the Agency for Prevention of Corruption. **In this respect, a clear responsibility of the Agency to ensure permanence of the reporting section of the website so that the reports stay publicly accessible for a sufficient (for example, during five years or more) or even indefinite period of time, should be added to the Law, to ensure a proper public scrutiny. Additionally, the Law should also oblige political parties to publish the reports on their respective websites.**

99. Furthermore, while the publication of financial reports is crucial to establishing public confidence in the functions of a party, reporting requirements must also strike a balance between necessary disclosure and exceptionally pressing privacy concerns of individual donors in cases of a reasonable probability of threats, harassment or reprisals, or where disclosure could result in serious political repercussions.[117] It is thus **recommended to include in the Law a provision according to which the disclosure and publication of donor information must also take into account privacy concerns.**

RECOMMENDATION F.

1. To provide greater details and clear rules on what must be reported annually, including donations received by a party, income acquired, loans and debts, as well as all expenditures.

2. To establish consistent and clear auditing obligations for political parties.

3. To require the reports to include sex-disaggregated data, including on candidates, expenditures and other forms of in-kind support, media coverage, as well as if feasible, data on ethnic origin and other protected characteristics, while ensuring the development of standardized, accessible, detailed and easily searchable formats of reporting.

4. To amend Article 51 of the Law to provide for the immediate publication of election campaign reports upon receipt (instead of after seven days) while

115 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 258.
116 See e.g., *Montenegro - Early Parliamentary Elections, 11 June 2023 - ODIHR Election Observation Mission Final Report*, p. 17.
117 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 263.

ensuring they remain available for a sufficient period of time to ensure proper public scrutiny.

7. MEDIA ADVERTISING AND POLITICAL ADVERTISING

100. Article 16 of the Law establishes requirements for both the media and political entities for setting and reporting the prices for political advertising, which help enhancing the transparency of the process. Positively, the Law also ensures stability in pricing by prohibiting media entities from changing prices during the election campaign. At the same time, during the country visit, several interlocutors raised concerns regarding the drastic increase of prices for advertising commodities such as billboards, ahead of the election campaign period. To avoid such increases, **the legal drafters could consider requiring that prices not be increased during a certain duration prior to the start of the election campaign**.

101. During the country visit, many interlocutors underlined the tendency of partisan positioning of private media, the opacity of the contractual modalities between political parties or candidates and the media, as well as the control exercised by foreign interests or entities over the private media. Some of these challenges were also highlighted in the most recent ODIHR election observation reports.[118]

102. As underlined in the Guidelines on Political Party Regulation, *"[w]hereas there are no obligations to regulate private media as strictly as public media, private outlets may still play a fundamental role in the public process of elections, providing a platform for contestants to present their ideas and for the media to offer information and assessment of the political actors*", and consequently, some form of regulation may be justified.[119] Depending on the specific country context, the ECtHR has considered that a ban on paid political advertising could constitute a breach of Article 10 of the ECHR while in another country context, it constituted a permissible attempt to "*protect the democratic process from distortion by powerful financial groups with advantageous access to influential media*".[120] Some OSCE participating States and Council of Europe member States, for example, impose regulations stating that airtime offered on private media must be offered to all parties at the same price or place limitations on the use of paid advertising.[121] The CoE Committee of Ministers also recommended that "*Member States may consider introducing a provision in their regulatory frameworks to limit the amount of political advertising space which a given party or candidate can purchase*".[122]

103. Given the challenges reported to ODIHR during the country visit, **the Law should clearly state that airtime offered on private media must be offered to all parties at the same price and transparency regarding prices should be ensured**. In addition, **the legal drafters should discuss whether to introduce some restrictions on paid political advertising by the media if this is considered justified and necessary in the country context to protect the democratic process from distortion and providing that provisions of electoral legislation on provision of free media time are sufficient to ensure that smaller or newly established parties/political entities can communicate their electoral programmes**.[123] As recommended by ODIHR in its

118 See e.g., *Montenegro - Early Parliamentary Elections, 11 June 2023 - ODIHR Election Observation Mission Final Report*, p. 17.
119 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 202.
120 See e.g., *TV Vest & Rogaland Pensjonistparti v. Norway*, ECtHR, 11 December 2008; *VgT v. Switzerland* (No. 2) [GC], ECtHR, no. 32772/02, 30 June 2009. See *Animal Defenders International v. United Kingdom [GC]*, ECtHR, no. 48876/08, 22 April 2013.
121 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 202.
122 See *Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns*, 7 November 2007, part 5.
123 Recommendation 11 of the *CoE Horizontal Facility Technical Paper*.

election observation reports, **the Agency for Electronic Media (AEM) should be mandated to oversee the compliance of broadcast media with election-related provisions while granting it with sufficient sanctioning and enforcement powers**.[124]

104. During the country visit, some interlocutors noted that some political parties seem to advantageously benefit from access to certain critical infrastructure or to the media for the purpose of campaigning, to the detriment of smaller or newly established parties. **It is advisable to consider introducing legal provisions to limit the amount of political advertising space which a given party or candidate can purchase**.[125] In addition, as recommended in ODIHR latest parliamentary election observation report, **political advertising online, including through social media and Google Ads, should also be accounted for and reported**.[126]

RECOMMENDATION G.

1. To clearly state in the Law that airtime offered on private media must be offered to all parties at the same price while ensuring transparency regarding prices.
2. To consider introducing some restrictions on paid political advertising by the media if this is deemed justified and necessary in the country context to protect the democratic process from distortion and providing that the provisions of electoral legislation on free media time are sufficient to ensure that smaller or newly established parties/political entities can communicate their electoral programmes.
3. To mandate the Agency for Electronic Media to oversee the compliance of broadcast media with election-related provisions and granting it sufficient sanctioning and enforcement powers.

8. SUPERVISORY AUTHORITY

105. There are different ways of enforcing political party and campaign finance provisions. As stated in Article 14 of CoE Committee of Ministers' Recommendation Rec2003(4), "*States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns. The independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication*." As also provided by ODIHR-Venice Commission Guidelines on Political Party Regulation, "*monitoring can be undertaken by a variety of different bodies and may include an internal independent auditing of party accounts by certified experts or a single public supervision body with a clear mandate, appropriate authority and adequate resources*."[127]

106. According to Articles 5 and 55 of the Law, the Agency for Prevention of Corruption is responsible for overseeing the implementation of this Law. Additionally, over a four-year period, the State Audit Institution (SAI) conducts audits of consolidated financial reports of political entities based on assessed risk and criteria outlined in the Guidelines on the Methodology of Performing Financial and Regularity Audits, as noted in Article 55. Article 63 further notes that the SAI provides opinions and recommendations to address

124 See e.g., *Montenegro - Early Parliamentary Elections, 11 June 2023 - ODIHR Election Observation Mission Final Report*, p. 20.
125 See *Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns*, 7 November 2007, part 5. See also *ODIHR Handbook on Media Monitoring for Election Observation Missions*, p. 33.
126 See *Montenegro - Early Parliamentary Elections, 11 June 2023 - ODIHR Election Observation Mission Final Report*, p. 17.
127 *Ibid.* para. 276.

irregularities, as required by this Law and its operational regulations. The legal drafters should **consider providing for more frequent auditing by the SAI, while possibly providing some thresholds of income above which a party must be audited to a level that ensures coverage of the more significant political entities**, while allowing the SAI to audit other parties if it deems necessary on the basis of a risk assessment.[128]

107. During the country visit, some interlocutors noted that the recommendations made by the SAI are generally not implemented; according to the Law on the State Audit Institution, an audited entity is obliged to submit its report on implementation of the recommendations given in the audit report, within the time frame set by the SAI but does not require compliance or provide for sanctions in case of non-compliance. **The legal drafters could consider whether the Law on the State Audit Institution should be amended to confer greater powers to SAI, including in terms of imposing potential sanctions**. It was also reported by the SAI during the country visit that even if it expresses adverse opinions on the financial statements of political entities and requires consultative hearings, the competent parliamentary Committee has no obligation to act and there is no consequences. The SAI and the Committee could **consider exploring formal mechanisms for enhancing co-operation**, although making it an obligation for the Committee to table discussions on the reports of the SAI may require amendments to the Rules of Procedure of the Parliament. Moreover, the Law lacks sufficient details on auditing criteria, processes, and deadlines. **Unless separately regulated, these aspects should be incorporated into the current Law or at least cross-referenced accordingly.**

108. In addition, it remains unclear whether all parties are subject to audit or only those receiving public funding. Generally, the legislation may exempt parties from audit obligations if they do not receive public funding and are not engaged in political activities.[129] However, since according to the Law, political parties which do not have seats in the parliament are not entitled to public funding of their regular operations, this might mean that they are also released from audit obligations. As mentioned above (see para. 36 *supra)*, a more equitable distribution of state funding to ensure a proper support of non-parliamentary parties together with related audit obligations thereof could be considered in this respect.

109. The Agency initiates the procedure to determine if there is a violation of the Law and then can impose measures (Article 56). This procedure can be started *ex officio* by the Agency based on its own knowledge or a report from a natural or legal person within 15 days, guaranteeing the applicant's anonymity. The procedure against a political entity is conducted by the Director through an authorized officer, who obtains necessary data from state bodies, public companies, and other entities, which should then submit the requested data within 15 days (Article 57). The current 15-day timeframe for both initiating and submitting data requests may be excessively lengthy. **To ensure prompt detection and resolution of any potential shortcomings or violations, infringement procedures should be initiated in a timely manner.**

110. According to the Law, political entities are not provided with the opportunity to submit documents, evidence, and supporting information once proceedings in case of violation of the Law have been commenced against them. The lack of provision for supplementary submissions could lead to unfair outcomes, especially in cases involving minor misunderstandings. This concern is exacerbated by the absence of judicial review for

128 Recommendation 33 of the *CoE Horizontal Facility Technical Paper*.

129 See Joint Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine, para 46. See also also *Joint Opinion* on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, 14 October 2024, para.64. See also the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 278.

these specific measures.[130] **It is recommended to amend the Law to enable political entities to submit supplementary documentation during proceedings in case of violation of the Law and to provide sufficient time for them to contest initiated procedures.**

111. This should be also read in conjunction with Article 60, according to which the Agency can issue warnings to political entities to correct shortcomings in violation of this Law. If issues are not resolved within 10 to 30 days, the Agency can initiate a misdemeanour procedure. For violations related to campaign financing, the Agency may impose measures such as suspension or loss of budgetary assets. If reports are not submitted, or bank accounts not opened, the Agency can suspend budget transfers until the respective obligations are met, potentially leading to a complete loss of budgetary assets if deadlines are missed (Article 60). Similar measures apply to the financing of regular operations, with the potential for suspension or loss of budgetary assets if reporting requirements are not fulfilled. In this respect, **the Law should make it clear that the complete withdrawal of public funding should only be considered for the more serious cases**. **While political entities maintain the right to initiate an administrative procedure to challenge the decision of the Agency (Article 61), it is crucial that political entities are provided with clear and robust procedural safeguards to contest these decisions within a reasonable timeframe, thereby ensuring effective legal recourse.[131]**

112. In general, the Agency's powers and responsibilities are extensive, but it lacks full investigative authority and direct access to certain databases. Without sufficient investigative powers, including carrying out on-site inspections, it can be challenging for any oversight body to effectively detect illegal sources of political party or campaign finance. Therefore, the body enforcing the relevant legislation should be granted adequate powers to effectively carry out these functions. According to the ODIHR-Venice Commission Guidelines on Political Party Regulation, "*[g]enerally, legislation should grant oversight agencies the ability to investigate and pursue potential violations. Without such investigative powers, agencies are unlikely to have the ability to effectively implement their mandate. Adequate financing and resources are also necessary to ensure the proper functioning and operation of the oversight body*."[132] Similarly, the Committee of Ministers Recommendation' Rec2003(4) requires that: "*independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication*."[133] The process of auditing alone may be rendered ineffective if the oversight body may do so solely on the basis of information submitted to it, and is not able to examine whether that information is realistic or accurate, and whether it presents an actual and complete picture of a contestant's income and expenditures, with involvement of internal and external expertise where necessary. **It is thus recommended that the Agency for Prevention of Corruption be granted enhanced investigative and inspection powers and direct access to necessary databases to effectively oversee political party and campaign finance.** Strengthening the Agency's capabilities in these areas would improve its ability to detect and address illegal sources of funding, ensuring greater transparency and

130 See Principle 7, the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*. See also Article 15 of the Human Rights Committee's General Comment No. 31. The case law under Article 13 ECHR, provides for a domestic remedy to deal with the substance of the Convention rights and to grant appropriate relief. See, for example *Nationaldemokratische Partei Deutschlands (NPD) v. Germany (dec.)*, no. 55977/13, 4 October 2016, para. 23.

131 Article 13 of the *ECHR* provides that *"[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.*" Similar provisions establishing the right to an effective remedy are found in Article 8 of the *UDHR*, Article 2 of the *ICCPR*. See also paragraph 5.10 of the *1990 OSCE Copenhagen Document*

132 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 278.

133 See also See also *Joint Opinion* on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, para. 43. See also *Joint Opinion* on the draft amendments to some legislative acts concerning prevention and fight against political corruption of Ukraine, para. 36.

accountability in political finance operations. This would ultimately uphold the integrity of electoral processes and enhance public trust in democratic institutions (see also additional comments the imposition of fines in Sub-Section 9 *infra*).

113. Furthermore, it is important that the Agency organises trainings for parties/entities on the reporting requirements and the respective procedure with the aim to explain and clarify the relevant rules to ensure their proper implementation.

RECOMMENDATION H.

1. To amend the Law to enable political entities to submit supplementary documentation during proceedings in case of violation of the Law and to provide sufficient time for them to contest initiated procedures.
2. To supplement the Law by providing political entities with clear and robust procedural safeguards to contest the decisions of the Agency within a reasonable timeframe.
3. To grant the Agency for Prevention of Corruption enhanced investigative and inspection powers and direct access to necessary databases to effectively oversee political party and campaign finance.

9. PENAL PROVISIONS

114. When determining sanctions, all violations should uniformly incur proportionate, effective, and dissuasive penalties.[134]

As mentioned above, following a warning of the Agency, in case of non-compliance by the set deadline (between 10 to 30 days), the misdemeanour procedure would be initiated. Article 64-70 then provides a range of financial sanctions for addressing noncompliance with laws and regulations. However, the variability in penalty amounts, from EUR 5,000 to EUR 20,000 or EUR 200 to EUR 2,000, may potentially lead to inconsistencies or bias when applied. Moreover, the proposed sanctions/fines are not designed in a way to ensure their proportionality with the seriousness of a violation, for instance considering the frequency/recidivism, size/scale, mitigating circumstances or not, etc.

115. **To enhance transparency and fairness, and ensure the effectiveness and dissuasiveness of sanctions, and their proportionality to the seriousness of the violation, it is recommended to redesign the sanctions for violations of the Law to ensure gradations**,[135] **with the highest amount of fines being applied only for the most serious offences, while ensuring that political entities are given time to correct minor (formal) errors; frequency/recidivism, size/scale, mitigating circumstances should be elements to be considered when imposing sanctions. It could be beneficial to mandate the Agency for Prevention of Corruption to develop and publish guidelines outlining specific criteria for determining the amount of fines. Furthermore, it is advisable that the penalties are established based on an indexation to avoid having them quickly becoming obsolete.**

134 See Article 16 of Recommendation Rec (2003)4 emphasizes the need for "*effective, proportionate and dissuasive sanctions for breaches of party and campaign finance rules.*" See also the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 272, which requires that sanctions should be applied against political parties found to be in violation of relevant laws and regulations and should be dissuasive in nature. Moreover, in addition to being enforceable, sanctions must at all times be objective, effective, and proportionate to the specific violation. See also *ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain* (30 October 2017), para. 67.

135 Recommendation 39 of the *CoE Horizontal Facility Technical Paper*.

116. During the country visit, it was underlined that the Agency for the Prevention of Corruption cannot impose administrative fines directly, which means that proceedings must be brought in a misdemeanour court, which appears rather burdensome. **It is recommended to consider amending the applicable legislation so that the Agency may impose administrative (lower) fines directly,**[136] **while higher fines may be imposed by a court.** The issue of imposing potential sanctions or fines on groups of voters or coalitions was also raised during the country visit, since they have no clear legal status, administrative sanctions for violations may not be imposed on them.[137] As recommended above, their legal status should be clarified.

RECOMMENDATION I.

1. To redesign the sanctions for violations of the Law to ensure the effectiveness and dissuasiveness of sanctions and their proportionality to the seriousness of the violation, to ensure gradations, with the highest amount of fines being applied only for the most serious offences, while ensuring that political entities are given time to correct minor (formal) errors and taking into account frequency/recidivism, size/scale, mitigating circumstances when imposing sanctions.
2. To consider amending the applicable legislation so that the Agency for Prevention of Corruption may impose administrative (lower) fines directly, while higher fines may be imposed by a court.

10. PROCESS OF AMENDING THE LAW

117. On 20 June 2024, the Committee for Comprehensive Electoral Reform decided to form a working group for the purpose of amending the Law.[138] The working group is composed of representatives from all political parties and parliamentary groups represented in the Committee, as well as representatives from the NGO sector and the academic community, and observers from the international community. At the time of the country visit, the working group had met four times.[139] During the country visit, it was indicated that the working intends to finalize the draft amendments to the Law by end-September/October with a view to have them adopted by the end of the year, after sharing with the EU counterparts.

118. The importance of inclusive and open lawmaking process should be highlighted. . In paragraph 5.8 of the 1990 OSCE Copenhagen Document, OSCE participating States have committed to ensure that legislation will be adopted at the end of a public procedure[140]. Moreover, key commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*"[141]. The ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024) underline the importance of evidence-based, open, transparent, participatory and inclusive lawmaking process, offering meaningful opportunities to all

136 Recommendation 43 of the *CoE Horizontal Facility Technical Paper*.
137 *CoE Horizontal Facility Technical Paper*, p. 41.
138 See <Committee for Comprehensive Electoral Reform holds fifth meeting (skupstina.me)>.
139 See < Working Group for Preparing the Draft Law on Financing of Political Entities and Election Campaigns holds fourth meeting (skupstina.me)>; and <Working Group for Preparing the Draft Law on Financing of Political Entities and Election Campaigns holds third meeting (skupstina.me)>.
140 See *1990 OSCE Copenhagen Document*, para. 5.8.
141 See 1991 *OSCE Moscow Document*, para. 18.1.

interested stakeholders to provide input at all its stages[142]. ODIHR also hereby refers to the key findings and recommendations from its Preliminary Opinion on the Legal Framework Governing the Legislative Process in Montenegro (2023).[143]

119. Effective consultations in the drafting of laws, as outlined in the relevant OSCE commitments, need to be inclusive, involving both the general public and stakeholders with a particular interest in the subject matter of the draft legislation, in this case all political parties as well as civil society organizations. Sufficient time should also be provided to ensure that the consultation process is meaningful, allowing adequate time to stakeholders to prepare and submit recommendations on draft legislation throughout the legislative process.[144]

120. It is understood that the membership in the working group is broader and more inclusive than that of the Committee, involving in addition representatives from oversight institutions (State Audit Institution and Agency for the Prevention of Corruption) as well as any NGO which may have expressed interest in contributing, which is positive providing that there is a meaningful opportunity to submit and discuss potential amendments and a proper feedback mechanism.

121. In light of the above, **the public authorities are encouraged to ensure that any amendments to the Law and electoral legal framework in general are preceded by a proper impact assessment and subjected to inclusive, extensive, effective and meaningful consultations throughout the legislative process, including with representatives of various political parties, academia, civil society organizations, which should enable equal opportunities for women and men to participate**. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the lawmaking process, including before Parliament. As a principle, accelerated legislative procedure should not be used to pass such types of legislation. As an important element of good lawmaking, a consistent monitoring and evaluation system on the implementation of legislation should also be put in place that would efficiently evaluate the operation and effectiveness of the draft laws, once adopted.[145]

[END OF TEXT]

142 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), in particular Principles 5, 6, 7 and 12. See also *Venice Commission, Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5.

143 See ODIHR, *Preliminary Opinion on the Legal Framework Governing the Legislative Process in Montenegro* (2 October 2023), available in Montenegrin and in English.

144 See ODIHR Guidelines on Democratic Lawmaking for Better Laws (January 2024), paras. 169-170. See also ODIHR, *Assessment of the Legislative Process in Georgia* (30 January 2015), paras. 33-34. See also ODIHR, *Guidelines on the Protection of Human Rights Defenders (2014)*, Section II, Sub-Section G on the Right to Participate in Public Affairs.

145 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), para. 23. See e.g., OECD, International Practices on Ex Post Evaluation (2010).