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

MONTENEGRO

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

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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 the 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. 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 the Electoral Code.

Lastly, consideration should be given to integrating gender aspects throughout the 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 parties and consider adjusting the respective amounts, with careful consideration given to balancing it with caps for private donations; [para. 28]
2. to consider 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; [para. 27]
3. to further strengthen and enforce in the Law provisions regarding parties' spending of public funds dedicated to their party-internal women's organizations,

while ensuring a proper monitoring and oversight of the relevant expenditures, along with proportionate sanctions in case of misuse; [para. 30]

B. Regarding pubic funding of election campaigns:

1. to consider increasing the percentage of pre-election public funding system, 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. 34]
2. to reconsider the deadlines for the pre-distribution of public funds for election campaigns by ensuring early disbursement, preferably shortly after announcement of elections; [para. 36]

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

1. 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; [paras. 45-49]
2. to 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; [paras. 51-55]
3. 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 64]

D. Regarding general limitations/banned sources on funding:

1. to consider introducing a possibility in the Law to allow for 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; [para. 67]
2. to envisage in the Law reasonable and proportionate limitations as to the third-party financing of election campaigns, while, among other, applying the same funding ceilings as those applicable to political parties and introducing reporting requirements for third parties to safeguard against potential loopholes to circumvent funding limits; [paras. 68-69]

E. Regarding reporting requirements:

1. to specify in the Law annual reporting obligations, including donations received by a party, income acquired, loans and debts, as well as all expenditures; [paras. 74-75]
2. to establish in the Law consistent and clear auditing obligations for political parties; [paras. 75 and 82]
3. to amend Article 51 of the Law to provide for the immediate publication of election campaign reports upon receipt while ensuring they remain available for a sufficient period of time to ensure proper public scrutiny; [para. 79]

F. Regarding supervision and oversight:

1. to amend the Law to enable political entities to submit supplementary documentation during disciplinary proceedings and to provide sufficient time for them to contest initiated procedures; [para. 84]
2. to supplement the Law by providing political parties with clear and robust procedural safeguards to contest the decisions of the Agency for Prevention of Corruption (hereinafter "the Agency") within a reasonable timeframe; [para. 85]
3. to grant the Agency enhanced investigative and inspection powers and direct access to necessary databases to effectively oversee political party and campaign finance; [para. 86]

G. To thoroughly review and standardize sanctions envisaged by the Law in order to remove inconsistencies, while also ensuring a regular re-evaluation of fines to maintain their effectiveness, proportionality and deterrent effect over time. [para. 90]

The above main findings and recommendations from the Preliminary Opinion will be revisited and fine-tuned when preparing the Final Opinion based on the information collected during the country visit.

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.

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I. INTRODUCTION

1. On 13 June 2024, the Vice President of the Parliament of Montenegro and Co-Chair of the Committee on 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. Given the ongoing discussions on the Law and proposed amendments, ODIHR is planning a country visit to meet with all relevant stakeholders and gain a better understanding of the local context and challenges. The Preliminary Opinion's main purpose is to provide a preliminary assessment of the compliance of the legal framework with relevant international standards and good practices, and to formulate initial recommendations to be presented and discussed during the country visit. The main findings and recommendations from the Preliminary Opinion will therefore be revisited and fine-tuned when preparing the Final Opinion based on the information collected during the country visit. In addition, as a follow-up to the initial request, the requestor expressed further interest in a number of important issues that have emerged during the ongoing discussions in the context of the legislative reform. These include, in particular, the regulation of third-party donations; the regulation and definition of non-financial contributions; the unification of the amounts for regular financing and campaign financing; the regulation of media advertising and political advertising, especially with country examples from other countries of Western Balkans. The Final Opinion will therefore address in greater details these specific issues.
4. This Preliminary 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 PRELIMINARY OPINION

5. The scope of this Preliminary Opinion covers the Law submitted for review. Thus limited, the Preliminary 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.
6. The Preliminary 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 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")[1]. Reference is also made to the relevant

1 See the ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020).

findings and recommendations from previous ODIHR election observation reports and legal opinions.

7. The Preliminary 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.

8. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[2] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality[3] and commitments to mainstream gender into OSCE activities, programmes and projects, the Preliminary Opinion integrates, as appropriate, a gender and diversity perspective.

9. 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

10. 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.[4] 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[5].

11. 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 participate in public affairs.[6] International commitments on financing political parties and

2 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.
3 See *OSCE Action Plan for the Promotion of Gender Equality, adopted by Decision No. 14/04, MC.DEC/14/04* (2004), para. 32.
4 ODIHR and Venice Commission, *Joint Guidelines on Political Party Regulation* (2nd edition, 2020), para. 17
5 *Ibid*. para. 204.
6 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.

election campaigns are also found in Article 7 paragraph 3 of the United Nations Convention against Corruption (hereinafter "UNCAC").[7]

12. 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.[8]

13. 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.[9] 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.

14. 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*."[10] 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.[11]

15. 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,[12] and the CEDAW General Recommendation No. 23: Political and Public Life.[13] 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 *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*".

8 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.

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

10 See the *1990 OSCE Copenhagen Document*.

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

12 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.

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

CoE Recommendation 1516(2001) on financing of political parties[14] are useful references.

16. The ensuing recommendations from the present Preliminary 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,[15] the ODIHR and Venice Commission Joint Guidelines on Freedom of Association,[16] and Reports of the CoE Group of States against Corruption (GRECO) relating to the transparency of party funding in Montenegro.[17]

2. GENERAL COMMENTS

17. Articles 1 to 11 of the Law outline its General Provisions, detailing its mandate (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).

18. 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.[18] Party and campaign finance legislation 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.[19] These issues will be discussed in greater details in the respective sections below.

19. Article 2 defines a political party 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*." This narrow

14 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.

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

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

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

18 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.

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

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 expanding the definition provided in the Law to a broader category of associations at all levels of governance that aim to present candidates for elections and exercise political authority through governmental institutions, regardless of whether the association is officially recognized or registered as a political party**. This broader definition would ensure inclusivity and recognize the diverse forms of political participation essential for a robust democratic process,[20] as well as will be better aligned with the definition provided in the Law on Political Parties of Montenegro.

20. Importantly, Article 2(1) of the Law defines "political entities" as "political parties, coalitions, groups of voters, and candidates for the election of the President of Montenegro". However, this term 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.**

21. 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.[21] 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. This also implies the use of words and terms whereby all individuals, irrespective of their sex, sexual orientation, gender and/or gender identity, are made visible and addressed in language as people of equal value, dignity, integrity and respect, including by avoiding, to the greatest possible extent, the use of language that refers explicitly or implicitly to only one gender. **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.**

22. Lastly, 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

20 The *ODIHR and the Venice Commission Joint 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 a country, inter alia, through the presentation of candidates in elections".

21 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), page 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).

appropriately placed in other laws, such as the election code, where other election campaign rules are discussed.

23. **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.**

3. PUBLIC FUNDING

3.1. Public Funding of Regular Operations of Political Parties

24. Article 12 defines costs for a party's regular operation. 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.

25. 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)).

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

27. 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.[22] 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. **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**. 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

22 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 242.

opportunities of small political parties; 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[23] (see also Sub-Section 3.2 on Public Funding of Election Campaigns *infra*).

28. 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."*[24] 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*."[25] 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. 57 *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 parties and consider adjusting the respective amounts, with careful consideration given to balancing it with private funding.**

3.1.1. Gender and Diversity Considerations

29. As mentioned above (see para. 25 *supra*), according to Article 13 of the Law, the remaining 20 per cent of public funding is distributed equally among political entities in the Parliament or municipal assemblies, proportionally to the number of elected representatives of the less represented gender. In addition, Article 14 allows parliamentary parties to receive public funding for women's organizations within their structure. 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 equal basis and are intended to finance only women organizations within a political entity.

30. ODIHR reported during its observation missions that some parties failed to report any expenditure related to their women's organizations.[26] 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.[27] It is noted that the PACE Resolution 2111 (2016) recommends to "*ensure that part of the public funding of political parties, when applicable, is reserved*

23 *Ibid*. *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, paras. 225 and 242.
24 See *ODIHR Final Report* on Early Parliamentary Elections in Montenegro, 11 June 2023, page 15.
25 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.
26 See ODIHR *Final Report on Early Parliamentary Elections in Montenegro*, 11 June 2023, page 16.
27 *Ibid*.

for activities aimed at promoting women's participation and political representation and guarantee transparency in the use of the funds".[28] **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. A proper monitoring and oversight mechanism, along with proportionate sanctions could provide stronger incentive to ensure compliance in this respect** (see also Sub-Section 8 on Sanctions *infra*).

31. **It would also be beneficial to mention funds to support specific youth organizations, persons with disabilities, minorities within parties, alongside women's sections. Additionally, public funding could also specifically be ear-marked for gender equality initiatives, such as training for women candidates, programmes related to women's empowerment,** as well as other measures to combat discrimination and violence against women in politics, support political participation of persons with disabilities, including 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.[29] These initiatives would align with international standards aimed at promoting gender equality and diversity in political participation, as embedded in the CEDAW, the CRPD, the Beijing Declaration and Platform for Action,[30] CoE Recommendation Rec(2003)3 of the Committee of Ministers on Balanced Participation of Women and Men in Political and Public Decision Making.[31] as well as the OSCE Ministerial Council Decision No. 7/09 on Women's Participation in Political and Public Life.[32]

RECOMMENDATION A.

1. To evaluate public funding of regular activities of political parties 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 represented in parliament or municipal assemblies, to ensure that non-parliamentary parties and newly established parties also become eligible.
3. To further strengthen and enforce in the Law provisions regarding parties' spending of public funds dedicated to their women's organizations, while ensuring a proper monitoring and oversight of the relevant expenditures, along with proportionate sanctions in case of misuse.

3.2. Public Funding of Election Campaigns

32. 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

28 See CoE, PACE Resolution "Assessing the impact of measures to improve women's political representation", para. 15.3.4.
29 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).
30 See United Nations, Beijing Declaration and Platform for Action.
31 See 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.
32 *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*, page 354. See also *ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain*, para. 70.

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

33. 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).

34. Similar to funding political parties' regular operations (see paras. 26-27 *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.**

35. 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

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.

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.

36. 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. 33 *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 early disbursement, before the confirmation of candidacies, especially in case of regularly scheduled elections.**

37. 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. This, in turn, could lead to a consistent reduction in the required budgetary financing.**

38. 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.

39. 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]

40. According to Article 18, within three days of verifying the electoral list, the Agency decides the campaign financing limits for all elections. **While the amount is dependent on the allocation of funds, to ensure legal certainty, it would be recommended to already define a clear formula in the Law. As an alternative, the introduction of an annual spending limit for political parties could be considered, and in this case, the Law could specify that election campaign spending should not exceed this limit.**

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. Notably, Article 16 also 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.

42. In addition to direct funding, the state may also provide indirect support to political parties 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,** notwithstanding the fact that the conditions of media coverage during election campaign might be defined by other legislation, including the Media Law of Montenegro. In this respect, it is important that gender considerations are also applicable regarding such indirect public support.[41]

RECOMMENDATION B.

1. To consider increasing the percentage of pre-election public funding system, 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 ensuring early disbursement, preferably shortly after announcement of elections.

4. PRIVATE FUNDING

43. 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 should have the right to freely express their support albeit with reasonable limits on the total amount of contributions and transparent receipt of donations.[42]

44. 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.

45. In addition to financial donations, which are regulated by the Law both in the context of regular operation and election campaigns (see Sub-Sections 4.1 and 4.2 *infra*), 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*."[43] 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.[44]

41 See ODIHR-Venice Commission, *Joint Opinion on the Draft Law on Political Parties of Mongolia* (2022), para. 99.
42 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, paras. 209-213.
43 *Ibid.* para. 216.
44 *Ibid.*

46. 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[45] 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.**

47. 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*".

48. As provided by the ODIHR-Venice Commission Guidelines on Political Party Regulation,[46] free services or a sub-market price by individuals or legal persons for which 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.[47]

49. **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.**

50. 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.[48] **It is recommended to regulate such activities in the Law and specify permissible limits, to prevent circumvention of donation restrictions.**

51. The Law should also explicitly address limitations on loans and rules concerning donations to entities associated with political parties.

45 *Ibid.* paras. 216-217.
46 *Ibid.* para. 217.
47 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.
48 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 225.

52. 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.[49] 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.[50]

53. 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.[51] 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 contributions. At the same time, if the loans remain unpaid, they should be typically categorized as a donation.

54. **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**.

55. 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)**.[52]

56. Since third party funding may be used to circumvent financial regulations, existing ceilings for donations to political parties and rules on spending should also apply to third parties when they are related, directly or indirectly, to a political party or are otherwise under the control of a political party or when their actions are intended to benefit specific political parties, either in general or during campaigns[53] (see Sub-Section 5 *supra* for more details).

4.1. Private Funding of Regular Operations of Political Parties

57. According to Article 15 of the Law, private donations to finance regular party activities, irrespective of whether they are from a physical or legal person, cannot exceed the total amount that a party has received from the state budget. For political parties 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 up to EUR 5,000 and a legal person up to EUR 20,000, annually (Article 15 (4)).

49 *Ibid.* para. 260.

50 *Ibid.* para. 260.

51 *Ibid.* para. 210.

52 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."

53 *Ibid. ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, paras. 218-221 and 255-256.

58. 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 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*".[54] 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**.

59. Political parties 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*."[55] While parties 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.**[56]

60. Furthermore, 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 fees in order to circumvent the legal limits on donations (see para 57 *supra*).[57] To avoid this, **it is recommended that membership fees be treated as contributions to prevent them from being used to circumvent donation limits**.[58]

4.2. Private Funding of Election Campaigns

61. 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 para 18 *supra*).

62. 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

54 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 214.
55 *Ibid*. para. 208.
56 *Ibid*.
57 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.
58 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 207.

budget in equal amounts to the political entities, see para. 33 *supra*). For presidential elections, private funding is limited to 0.07 per cent of the total planned current budget.

63. 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. 57 *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.**

64. 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**.[59]

RECOMMENDATION C.

1. 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.

2. To 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.

3. To define in the Law membership fees and sponsorships as contributions in order to prevent them from being used to circumvent donation limits.

5. BANNED SOURCES OF FUNDING

65. 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.

66. 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 the international good practice.[60] 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

59 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 215.

60 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.

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*".

67. Article 33 prohibits contributions from "other states" and entities, 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*."[61] It is, however, noteworthy that many states allow for some exceptions to such an outright prohibition of foreign donations, and it is 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.[62] 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*)".[63] Additionally, this type of 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. Depending on the regulation of national branches of international associations, financial support from such bodies may not necessitate the same level of restriction. Therefore, **it is recommended to reassess the outright prohibition on monetary donations from international sources, to determine whether some reasonable and balanced exceptions may be envisaged in the Law 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.**

68. Article 34 prohibits giving or receiving contributions in cash or in the form of products or services through third parties. It should be noted, however, that 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.[64] 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. 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.[65]

69. At the same time, it is important 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.[66] Measures addressing third-party involvement

61 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.

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

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

64 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*. para. 219.

65 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 the *Bowman v. United Kingdom*, judgment, ECtHR, (1998).

66 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*. para. 256.

should be proportionate and consider the overarching goal of creating a level playing field for all political parties. 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 strict reporting requirements for third-party contributions would also further enhance the effectiveness of campaign finance regulations.[67] **Therefore, instead of unconditional banning, it is recommended to envisage in the Law reasonable and proportionate limitations as to the third-party financing in relation to election campaigns, while clearly distinguishing true electoral "third parties" that 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, consideration should be given to applying the same funding ceilings as those applicable to political parties and regulating reporting requirements to safeguard against potential loopholes through which unlimited funding can be channelled and financial transactions can be veiled**. Furthermore, one of the solutions could be the establishment of a registry of third-party campaigners for whom expenditure limits would apply.[68] 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.

70. It is also important to stress that 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 a safeguard against corruption and interference with a political party's independence, if implemented effectively.[69] 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.[70] **While these provisions are appreciated, such restrictions should also be prescribed by other laws covering electoral campaigns.**

RECOMMENDATION D.

1. To consider introducing a possibility in the Law to allow for 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.

67 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."

68 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).

69 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

70 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."*

2. To envisage in the Law reasonable and proportionate limitations as to the third-party financing of election campaigns, while, among other, applying the same funding ceilings as those applicable to political parties and introducing reporting requirements for third parties to safeguard against potential loopholes to circumvent funding limits.

6. TRANSPARENCY OF POLITICAL PARTY AND ELECTION CAMPAIGNS FINANCING

71. 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. All systems 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.[71] The ODIHR-Venice 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.[72] 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[73] 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 parties, candidates and oversight bodies. Transparency measures should also be partly achieved by the existing reporting requirements.

6.1. Formal Requirements

72. 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.

73. 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

71 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.

72 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 247.

73 See European Court of Human Rights, *Cumhuriyet Halk Partisi v. Turkey*, no. 19920/13, 26 April 2016.

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

74. 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 Office 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 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).

75. 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 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."[74] Disclosure requirements for political financing are essential policy instruments for achieving transparency. **It is, therefore, recommended to supplement the Law to provide greater details on what must be reported annually, including donations received by a party, income acquired, loans and debts, as well as all the expenditures, and toestablish consistent and clear auditing obligations for political parties** (see also para. 82 *infra*)**. Enhancing these requirements will increase the transparency of political party financing.**

76. 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.

74 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 260.

77. 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.

78. 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**. **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.**[75]

79. The Law does not specify how long financial reports shall remain on the website of the Agency. **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.**

80. 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.[76] 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 E.

1. To specify in the Law annual reporting obligations, including donations received by a party, income acquired, loans and debts, as well as all expenditures.

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

3. To amend Article 51 of the Law to provide for the immediate publication of election campaign reports upon receipt while ensuring they remain available for a sufficient period of time to ensure proper public scrutiny.

75 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 258.
76 *Ibid.* para. 263.

7. SUPERVISORY AUTHORITY

81. 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*."[77]

82. According to Articles 5 and 55 of the Law, the Agency is responsible for overseeing the implementation of this Law. Additionally, the State Audit Institution 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 State Audit provides opinions and recommendations to address irregularities, as required by this Law and its operational regulations. However, 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.** Moreover, 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.[78] 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. 27 *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.

83. 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.**

84. According to the Law, political entities are not provided with the opportunity to submit documents, evidence, and supporting information once disciplinary proceedings 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 these specific

77 *Ibid.* para. 276.

78 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.

measures.[79] **It is recommended to amend the Law to enable political entities to submit supplementary documentation during disciplinary proceedings and to provide sufficient time for them to contest initiated procedures.**

85. 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, which is distinct from disciplinary proceedings under Article 57. 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. 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. **While political entities maintain the right to appeal decisions to the court (presumably permitted under Article 61), it is crucial that political parties are provided with clear and robust procedural safeguards to contest these decisions within a reasonable timeframe, thereby ensuring effective legal recourse.[80]**

86. 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*.[81]" 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*."[82] 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 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 accountability in political finance operations. This would ultimately uphold the integrity of electoral processes and enhance public trust in democratic institutions.

79 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.

80 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*

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

82 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.

87. 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 F.

1. To amend the Law to enable political entities to submit supplementary documentation during disciplinary proceedings and to provide sufficient time for them to contest initiated procedures.

2. To supplement the Law by providing political parties with clear and robust procedural safeguards to contest the decisions of the Agency within a reasonable timeframe.

3. To grant the oversight Agency enhanced investigative and inspection powers and direct access to necessary databases to effectively oversee political party and campaign finance.

8. PENAL PROVISIONS

88. Article 16 of Recommendation Rec (2003)4 emphasizes the need for "*effective, proportionate and dissuasive sanctions for breaches of party and campaign finance rules.*"[83]

89. As per good practice, the Law offers a range of financial sanctions for addressing noncompliance with laws and regulations, which is commendable. However, the variability in penalty amounts, from EUR 5,000 to EUR 20,000 or EUR 200 to EUR 2,000, could lead to perceptions of inconsistency or bias in decision-making. **To enhance transparency and fairness, it could be beneficial for the legislation to mandate the Agency 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.**

90. There appears to be a discrepancy in the Law regarding the imposition of fines and other sanctions, such as the loss of public funding. For instance, according to Article 60, the Agency may impose the penalty of total or partial loss of budgetary funding in cases of violations of Articles 18, 20, and 25, or complete loss of budgetary assets for misdemeanours specified in Article 66 (paragraphs 1, 6, 20, 29, and 40). However, these misdemeanours are also listed under Article 66, leading to inconsistencies. There are also inconsistences with Article 66.23, whichenvisions fines for starting an election campaign before confirming the election list and for failing to open a separate account. Yet, Articles 24 and 30 allow the possibility to commence early campaigning upon opening a bank account. As a good practice, when determining sanctions, all violations should uniformly incur proportionate, effective, and dissuasive penalties.[84] **Sanctions envisaged by the Law should be thoroughly reviewed and standardized to remove inconsistencies. Any measures or sanctions imposed by the Agency should be proportionate, effective, and dissuasive. Furthermore, regular re-evaluation of fines is advisable to maintain their effectiveness, proportionality, and deterrent effect over time.**

83 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.

84 See *ODIHR Opinion* on Laws Regulating the Funding of Political Parties in Spain (30 October 2017), para. 67.

RECOMMENDATION G.

To thoroughly review and standardize sanctions envisaged by the Law in order to remove inconsistencies, while also ensuring a regular re-evaluation of fines, based on an indexation, to maintain their effectiveness, proportionality and deterrent effect over time.

9. PROCESS OF AMENDING THE LAW

91. Since the authorities are envisaging reforming the party and campaign finance regulations by, among other, amending the current Law and that the relevant working group has been stablished for this purpose under the Committee on Comprehensive Electoral Reform, the importance of inclusive and open lawmaking process should be highlighted in this respect. 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).[85]

92. 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[86]. 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*"[87]. 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 interested stakeholders to provide input at all its stages[88]. 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.

93. Public consultations constitute a means of open and democratic governance as they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted. Consultations on draft legislation and policies, in order to be effective, and meaningful need to be inclusive and to provide relevant stakeholders with sufficient time to prepare and submit recommendations on draft legislation.[89] To guarantee effective participation, consultation mechanisms should allow for input at an early stage and throughout the process.[90]

94. 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**

85 See ODIHR, Preliminary Opinion on the Legal Framework Governing the Legislative Process in Montenegro (2 October 2023), available in Montenegrin and in English.
86 See *1990 OSCE Copenhagen Document*, para. 5.8.
87 See *1991 OSCE Moscow Document*, para. 18.1.
88 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.
89 According to recommendations issued by international and regional bodies and good practices within the OSCE area, public consultations generally last from a minimum of 15 days to two or three months, although this should be extended as necessary, taking into account, *inter alia*, the nature, complexity and size of the proposed draft act and supporting data/information.
90 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.

meaningful consultations, 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.[91]

[END OF TEXT]

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