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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**REVISED DRAFT LAW**

**ON**

**THE SPECIAL STATE PROSECUTOR'S OFFICE**

**OF MONTENEGRO**

**4 December 2014**

*Montenegro*  
**GOVERNMENT OF MONTENEGRO**  
*No: 08-2856/4*  
*Podgorica, 4 December 2014*

**To the attention of THE SPEAKER OF THE PARLIAMENT OF MONTENEGRO**

**PODGORICA**

At the session held on 4 December 2014, the Government of Montenegro adopted the **PROPOSAL FOR THE LAW ON SPECIAL PUBLIC PROSECUTOR'S OFFICE**, which is enclosed in the attachment, for the purpose of launching the procedure at the Parliament of Montenegro.

The Government proposes to the Parliament, in accordance with Article 151 of the Rules of Procedure of the Parliament of Montenegro (Official Gazette of the Republic of Montenegro 51/06, 66/06 and Official Gazette of Montenegro 88/09, 80/10, 39/11 and 25/12), to adopt this Law in a summary procedure, given the reasons contained in the rationale of the Proposal for the Law.

DUŠKO MARKOVIĆ, Deputy Prime Minister and Minister of Justice and BRANKA LAKOČEVIĆ, Deputy Minister of Justice have been designated as the representatives of the Government who will participate in the work of the Parliament and its working bodies, on the occasion of consideration of the Proposal for this Law.

PRIME MINISTER  
Milo Đukanović, signed

**DRAFT**  
**PROPOSAL**

**LAW**  
**ON SPECIAL PUBLIC PROSECUTOR`S OFFICE**

**I BASIC PROVISIONS**

**Scope of the Law**

**Article 1**

This Law shall govern organisation and jurisdiction of the Special Public Prosecutor`s Office, requirements and procedure for election of the chief special prosecutor and special prosecutors and relationship with other state authorities and state administrative authorities, as well as the other matters relevant for operation of the Special Public Prosecutor`s Office.

**Special Public Prosecutor`s Office**

**Article 2**

The Special Public Prosecutor`s Office shall be established for the territory of Montenegro within the Public Prosecution Service which is a unique and autonomous authority.

The Special Public Prosecutor`s Office shall take all the actions falling within its jurisdiction before the Special Division of the High Court in Podgorica.

The seat of the Special Public Prosecutor`s Office shall be in Podgorica.

**Jurisdiction**

**Article 3**

The Special Public Prosecutor`s Office shall have jurisdiction for the prosecution of criminal perpetrators as follows:

- 1) organised crime, regardless of duration of the prescribed punishment;
- 2) high-level corruption;
- a) if a public official committed the following criminal offences:
  - abuse of office,
    - fraud in the conduct of an official duty,
    - trading in influence,
    - inciting to engage in trading in influence,
    - passive bribery,
    - active bribery,
- b) if the proceeds of crime exceeding the amount of EUR 40,000 have been obtained by committing the following criminal offences:
  - abuse of position in business undertakings,
    - abuse of authority in economy,
- 3) money laundering;
- 4) terrorism and
- 5) war crimes.

A public official, within the meaning of this Law, shall be a person who is elected, nominated or appointed to a state authority, state administrative authority, local self-government authority, local administration authority (hereinafter referred to as: official authority), independent authority, regulatory authority, public institution, public enterprise or to any other business organisation or legal entity that exercises public powers or undertakes activities of public interest or is owned by the state, as well as a person whose election, nomination and appointment are subject to the consent of the official authority.

## **Managing the Special Public Prosecutor`s Office**

### **Article 4**

The tasks involving prosecution of the perpetrators of criminal offences referred to in Article 3 of this Law shall be carried out by the chief special prosecutor as the head of the public prosecutor`s office and special prosecutors as public prosecutors, whose number shall be established by the Prosecutorial Council in accordance with the Law on Public Prosecution Service.

The chief special prosecutor shall be accountable for his/her work and work of the Special Public Prosecutor`s Office to the supreme public prosecutor, whereas special prosecutors shall be accountable for their work to the chief special prosecutor.

## **Institutional Supervision**

### **Article 5**

Supervision over operation of the Special Public Prosecutor`s Office shall be exercised by the Supreme Public Prosecutor`s Office in accordance with the supervision plan established by the supreme public prosecutor in accordance with the Law on Public Prosecution Service.

## **Funds for Operation**

### **Article 6**

Funds for operation of the Special Public Prosecutor`s Office shall be allocated in a budget item envisaged for the Public Prosecution Service.

## **Relationship between Laws**

### **Article 7**

Provisions of the Law on Public Prosecution Service shall apply accordingly to the matters that are not regulated under this Law.

## **Use of Gender Sensitive Language**

### **Article 8**

The terms used in this Law for physical entities in masculine gender shall mean the same terms in feminine gender.

## **I. II ORGANISATION OF THE SPECIAL PUBLIC PROSECUTOR`S OFFICE**

### **Internal Organisation**

#### **Article 9**

The Special Public Prosecutor`s Office shall have divisions and services.

Divisions shall be organised to carry out tasks involving criminal prosecution, financial investigations, analytics and research and international cooperation.

Services may be set up for public relations, as well as for the purpose of carrying out professional, administrative and technical tasks.

### **Divisions**

#### **Article 10**

The Division for Criminal Prosecution Tasks shall carry out tasks involving preliminary inquiry, investigation, as well as the tasks involving cooperation with other authorities.

The Division for Financial Investigations shall carry out tasks involving collection of data and their analysis for the purpose of establishing the exact value of the proceeds of crime, detecting assets obtained by committing a criminal offence, while it also takes measures to ensure that the assets are confiscated.

The Division for Analytics and Research shall carry out tasks involving creation and maintenance of technical conditions for the exchange of and access to data in the databases of other state authorities, as well as statistical reporting and monitoring of cases.

The Division for International Cooperation shall carry out tasks involving cooperation with the competent authorities and bodies of other states and international organisations, appointment of members of the joint investigative team which is set up on the basis of an international treaty for the purpose of criminal prosecution for the criminal offences that fall within jurisdiction of the Special Public Prosecutor's Office.

### **Activity Report**

#### **Article 11**

The chief special prosecutor shall submit a six-month activity report on the Special Public Prosecutor's Office to the supreme public prosecutor.

The chief special prosecutor shall submit activity report on the Special Public Prosecutor's Office to the Prosecutorial Council at the latest by 10 February of the current year for the previous year and shall post it, within the same time-limit, on the website of the Special Public Prosecutor's Office.

At the request of the supreme public prosecutor, or of the Prosecutorial Council, the chief special prosecutor shall submit separate, i.e. periodic reports within the time-limit set by the supreme public prosecutor or by the Prosecutorial Council.

The chief special prosecutor shall be accountable for accuracy of the data contained in the reports.

## **III ELECTION OF THE CHIEF SPECIAL PROSECUTOR AND SPECIAL PROSECUTOR**

### **Requirements for Election of the Chief Special Prosecutor**

#### **Article 12**

To the position of the chief special prosecutor may be elected a person who meets general work requirements for state administration, and who:

- 1) graduated from law school with the VII1 level of educational qualification;
- 2) passed judicial exam;
- 3) has at least 12 years of work experience as public prosecutor, judge or attorney, and
- 4) whose previous work shows that he/she has special knowledge and competences to work on the cases falling within jurisdiction of the Special Public Prosecutor's Office.

### **Requirements for Election of the Special Prosecutor**

#### **Article 13**

To the position of the special prosecutor may be elected a person who meets general work requirements for state administration, and who:

- 1) graduated from law school with the VII1 level of educational qualification;
- 2) passed judicial exam;
- 3) has at least ten years of work experience as public prosecutor, judge or attorney, and
- 4) whose previous work shows that he/she has special knowledge and competences to work on the cases falling within jurisdiction of the Special Public Prosecutor's Office.

### **Public Advertisement**

#### **Article 14**

The Prosecutorial Council shall elect the chief special prosecutor and special prosecutors on the basis of a public advertisement.

The Prosecutorial Council shall advertise vacancies for the chief special prosecutor, i.e. special prosecutor in the Official Gazette of Montenegro and in one print media with the head office in Montenegro.

The time-limit for candidates to file their applications shall be 15 days from the day of publishing the advertisement referred to in paragraph 2 of this Article.

### **Acting upon Applications**

#### **Article 15**

Applications to the public advertisement shall be submitted together with the proofs of fulfilling the requirements for election to the position of the chief special prosecutor, i.e. special prosecutor to the Prosecutorial Council within 15 days from the day the advertisement has been published.

The Prosecutorial Council shall dismiss untimely and incomplete applications.

The applicant may initiate administrative dispute against the decision to dismiss untimely and incomplete application.

### **List of Candidates**

#### **Article 16**

The Prosecutorial Council shall compile the list of candidates who meet the requirements set out by the law for election to the position of the chief special prosecutor, i.e. special prosecutor.

### **Criteria**

#### **Article 17**

The criteria for election to the position of the chief special prosecutor and special prosecutors shall be expert knowledge and competence to discharge prosecutorial functions.

Expert knowledge shall be evaluated on the basis of the following sub-criteria:

- 1) professional development (continuous training and other forms of training);
- 2) published scientific and professional papers and other activities in the field of profession.

Competence to discharge prosecutorial function shall be evaluated on the basis of the following sub-criteria:

- 1) work experience;
- 2) quantity and quality of work;
- 3) motivation to work in the Special Public Prosecutor`s Office;
- 4) good communication skills;
- 5) ability to make decisions;
- 6) understanding the role of public prosecutor in society.

### **Criteria Evaluation**

#### **Article 18**

Expert knowledge of the candidate for the chief special prosecutor, i.e. special prosecutor shall be evaluated on the basis of proofs submitted along with the candidate`s application.

Competence to discharge prosecutorial function of the candidate for the chief special prosecutor, i.e. special prosecutor shall be evaluated on the basis of the opinion and the interview.

**Opinion**  
**Article 19**

The Prosecutorial Council shall obtain opinion on professional competences of the candidate referred to in Article 16 of this Law for discharging prosecutorial function, as follows:

- from the enlarged session of the Supreme Public Prosecutor`s Office for the public prosecutor;
- from the enlarged session of the Supreme Court of Montenegro for the judge;
- from the steering board of the Bar Association of Montenegro for the attorney.

The opinion referred to in paragraph 1 of this Article shall contain data on work experience, quantity and quality of work of the candidate for chief special prosecutor, i.e. special prosecutor.

**Interview**  
**Article 20**

The Prosecutorial Council shall conduct interview with candidates for the chief special prosecutor, i.e. special prosecutor during which the following shall be evaluated:

- 1) motivation to work in the Special Public Prosecutor`s Office;
- 2) good communication skills;
- 3) ability to make decisions;
- 4) understanding the role of public prosecutor in society.

**Decision**  
**Article 21**

On the basis of the documents submitted along with the application, the opinion referred to in Article 19 of this Law and the interview referred to in Article 20 of this Law, the Prosecutorial Council shall render decision on election of the chief special prosecutor, i.e. special prosecutor.

**Term of Office**  
**Article 22**

The chief special prosecutor shall be elected for a term of office of five years.

The special prosecutor shall be elected to serve life tenure if he/she has worked for at least four years as the public prosecutor or as the judge.

The special prosecutor who has not worked as the public prosecutor or as the judge for at least four years shall be elected for a period of four years.

Provisions of the Law on Public Prosecution Service governing election of public prosecutors to serve life tenure shall apply accordingly to the procedure for election of the special prosecutor referred to in paragraph 3 of this Article to serve life tenure.

**Termination of the Term of Office**  
**Article 23**

The same person may be elected to the position of the chief special prosecutor two times at the most.

The chief special prosecutor shall continue to work as special prosecutor at the Special Public Prosecutor`s Office upon expiry of the period which he/she has been elected for and upon termination of office of the chief special prosecutor when he/she so requested himself/herself.

## **Reassignment of Public Prosecutors**

### **Article 24**

The Prosecutorial Council may, at the chief special prosecutor`s request, reassign the public prosecutor to the Special Public Prosecutor`s Office for a certain period of time in order for him/her to carry out tasks of urgent nature or in the event of an increased workload.

The reassignment referred to in paragraph 1 of this Article shall be carried out subject to the written consent of the public prosecutor being reassigned and may last up to two years.

The Prosecutorial Council may, at the chief special prosecutor`s request, reassign the public prosecutor to the Special Public Prosecutor`s Office for a certain period of time in order for him/her to work on a specific case.

Reassignment to the Special Public Prosecutor`s Office referred to in paragraph 3 of this Article shall last up to one year and may be extended under the same conditions.

During the work in the Special Public Prosecutor`s Office, the reassigned public prosecutor referred to in paras. 1 and 3 of this Article shall be entitled to the salary that equals the special prosecutor`s salary and also to the housing and travel expenses.

The salary and housing and travel expenses incurred as a result of reassignment to the Special Public Prosecutor`s Office shall be paid by the Special Public Prosecutor`s Office.

## **Appropriate Application**

### **Article 25**

Provisions of the Law on Public Prosecution Service shall apply accordingly to taking an oath and taking an office, rights of the candidate and court protection of the candidate.

## **IV RELATIONSHIP BETWEEN THE SPECIAL PUBLIC PROSECUTOR` S OFFICE AND POLICE ADMINISTRATION**

### **Police Division**

#### **Article 26**

Police tasks related to the criminal offences referred to in Article 3 of this Law shall be carried out by police officers employed in a special organisational unit of the administrative authority responsible for police work with the Special Public Prosecutor`s Office (hereinafter referred to as: Police Division).

The head of the Police Division may be a person who holds the VII1 level of educational qualification and has at least eight years of work experience in the positions in police profession for which a university degree is required.

The head of the Police Division shall be appointed by the director of the administrative authority responsible for police affairs (hereinafter referred to as: Police Administration) subject to the consent of the chief special prosecutor.

Police officer in the Police Division may be a person who holds the VII1 level of educational qualification and has at least four years of work experience in the positions in police profession for which a university degree is required.

Exceptionally from paragraph 4 of this Article, the police officer that holds the VII1 level of educational qualification, who has at least two years of work experience in the positions for which a university degree is required and who passed state exam to be eligible to work in state authorities may also be employed in the Police Division.



**Accountability of the Police Officer**  
**Article 27**

The head and police officer from the Police Division shall execute order given by the chief special prosecutor, i.e. special prosecutor.

If the police officer fails to execute order given by the special prosecutor in the case he/she has been assigned, the chief special prosecutor shall file a motion to initiate disciplinary proceedings against him/her in accordance with the law governing interior affairs.

The head and police officer may not be reassigned to another position or to carry out other tasks in the Police Administration without the chief special prosecutor`s consent.

**V INVESTIGATORS**

**Investigators**  
**Article 28**

For the purpose of investigating criminal offences that fall within jurisdiction of the Special Public Prosecutor`s Office, the chief special prosecutor may delegate certain tasks to the civil servants employed in administrative authorities responsible for tax affairs, customs affairs, affairs involving prevention of money laundering and terrorist financing and inspection affairs (hereinafter referred to as: investigators).

At the chief special prosecutor`s request, the heads of authorities referred to in paragraph 1 of this Article shall submit the list of civil servants who have relevant work experience and competences for carrying out tasks of supervision and control and have other technical knowledge that is relevant for investigation into criminal offences falling within jurisdiction of the Special Public Prosecutor`s Office.

Upon the chief special prosecutor`s proposal, the supreme public prosecutor shall compile the list of investigators and submit it to the heads of authorities referred to in paragraph 1 of this Article and to the chief special prosecutor.

The chief special prosecutor may conduct interview with the civil servants referred to in paragraph 2 of this Article before making the proposal referred to in paragraph 3 of this Article.

**Powers and Accountability of Investigators**  
**Article 29**

The investigator shall take actions by executing the special prosecutor`s order and following his/her instructions, in accordance with the rules of his/her profession, as well as in accordance with the Criminal Procedure Code.

The investigator shall take actions referred to in paragraph 1 of this Article within the time-limit set by the special prosecutor and he/she may not notify his/her immediate superior about the actions taken.

If the investigator, without any justifiable reason, fails to act in accordance with or acts in contravention of the special prosecutor`s order and instructions, the special prosecutor shall notify the investigator`s immediate superior thereof.

Failure to execute the special prosecutor`s order and acting in contravention of the special prosecutor`s order and instructions within the meaning of paragraph 3 of this Article shall constitute severe breach of official duty by the investigator.

In the event referred to in paragraph 3 of this Article, the immediate superior shall initiate disciplinary proceedings against the investigator.

The investigator shall declare his/her assets and income, as well as the assets and income of his/her spouses and common law partners and children (hereinafter referred to as: asset declaration sheet) in accordance with the law governing prevention of corruption.

### **Special Investigative Team Article 30**

In particularly complex cases the chief special prosecutor may form a special investigative team which, besides special prosecutor, may also comprise police officers from the Police Division, investigators and civil servants from another competent authority.

The head of investigation team shall be special prosecutor, while members of investigative team shall execute his/her order and act under his/her supervision.

### **Relationship with Administrative Authorities Article 31**

When, in carrying out the tasks falling within his/her jurisdiction, the special prosecutor deems it necessary he/she may request from administrative authorities responsible for tax affairs, customs affairs, affairs involving money laundering and terrorist financing and inspection affairs as well as from the other state administrative authorities to control operations of a legal or physical entity, obtain certain documents, data and to take other actions falling within their mandate, in accordance with the regulations governing the mandate of these authorities.

### **Obligation to Submit Data Article 32**

When, in carrying out the tasks falling within its jurisdiction, the administrative authority responsible for the prevention of money laundering and terrorist financing has established on the basis of the data, information and documents obtained in accordance with the law that there are grounds for suspicion that funds, income and assets have been obtained by committing a criminal offence referred to in Article 3 of this Law it shall submit these data to the Special Public Prosecutor's Office within three days.

### **Obligations of the Banks Article 33**

If there are grounds for suspicion that a person disposes of or has disposed of an income in his/her bank accounts which was generated by committing criminal offences referred to in Article 3 of this Law, while such income is relevant for preliminary inquiry and investigation and is subject to seizure, the special prosecutor shall request from the bank to submit data on these accounts and on the account balance.

The bank shall submit the data referred to in paragraph 1 of this Article within the time-limit set by the special prosecutor.

The request referred to in paragraph 1 of this Article shall contain statutory title of the criminal offence, short factual description and data on physical or legal entity in relation to which the request is submitted, as well as a more detailed description of the measure or action which is requested.

### **Binding Nature of the Investigative Judges` Decisions on Banks**

#### **Article 34**

If there are grounds for suspicion that a person disposes in his/her bank account of an income generated by committing criminal offences referred to in Article 3 of this Law the investigative judge may, at the special prosecutor`s request, bind the bank by a decision to monitor payment transactions in a person`s accounts and to report on a regular basis, during the period determined for monitoring payment transactions, to the special prosecutor about the transactions effected in the account which is monitored.

For failure to enforce the decision referred to in paragraph 1 of this Article, the investigative judge may fine a responsible person in the bank by up to EUR 5,000, and the bank by up to EUR 50,000.

If even after the fine referred to in paragraph 2 of this Article has been imposed the bank still fails to enforce the investigative judges` decision, the imprisonment sentence may be imposed on a responsible person in the bank until such decision is enforced, and for the period of up to two months.

An appeal may be lodged against the decision referred to in paras. 1, 2 and 3 of this Article within 48 hours from the hour when the decision has been received.

The panel of the competent court referred to in Article 24 paragraph 7 of the Criminal Procedure Code shall decide on the appeal referred to in paragraph 4 of this Article. An appeal against the decision to impose imprisonment sentence does not stay enforcement of the decision.

### **Submission of Data**

#### **Article 35**

The data from the records of state authorities and state administrative authorities that are relevant for initiating and conducting criminal proceedings for criminal offences referred to in Article 3 of this Law shall be submitted at the request of the Special Public Prosecutor`s Office through the information system for electronic data exchange in accordance with the law governing electronic government.

In submission of the classified data that are relevant for initiating and conducting criminal proceedings for criminal offences referred to in Article 3 of this Law by electronic means, the IT protection of such data shall be ensured in accordance with the law governing data secrecy.

Information about the requested and submitted data referred to in paras.1 and 2 of this Article shall be inaccessible to the persons they refer to until the investigation order is issued or until the direct indictment is brought or until the bill of indictment is submitted.

### **Access to Data**

#### **Article 36**

The Special Public Prosecutor`s Office may access data in the databases of information systems of other state authorities and state administrative authorities.

With the aim of ensuring access to data referred to in paragraph 1 of this Article, the Special Public Prosecutor`s Office shall create technical conditions for IT protection of such data.

## **VI EMPLOYEES IN THE SPECIAL PROSECUTOR`S OFFICE**

### **Employees**

#### **Article 37**

The Special Public Prosecutor`s Office shall have a necessary number of advisors, other civil servants and state employees which shall be established in the act on internal organisation and job descriptions of the Special Public Prosecutor`s Office.

Background check of advisors, civil servants and state employees shall be carried out in case of employing them in the Special Public Prosecutor`s Office in accordance with the law governing data secrecy.

### **Advisor**

#### **Article 38**

Advisor may be a person who graduated from law school and attained the VII1 level of educational qualification, passed judicial exam and has at least five years of work experience.

Advisors shall assist the special prosecutor in his/her work, prepare draft documents, enter citizens` reports, briefs and statements into the records, carry out other technical tasks prescribed by the law and regulations adopted under the law either autonomously or under the supervision and by following instructions of the special prosecutor.

If they are given the power by the special prosecutor, advisors may also conduct certain evidentiary procedures.

Records on the delegated task that has been carried out shall be certified by the special prosecutor by his/her signature within 48 hours from the hour it has been carried out.

### **Civil Servants with Special Expert Knowledge**

#### **Article 39**

The Special Public Prosecutor`s Office may hire economists, accounting-finance officers and members of other relevant professions with relevant work experience in these areas who shall assist the special prosecutor in his/her work regarding the matters for which expert knowledge of these fields is required.

### **Application of other Laws**

#### **Article 40**

Unless otherwise provided for by this Law, the regulations governing rights, obligations and duties of civil servants and state employees shall apply to the employment and termination of employment of advisors, other civil servants and state employees, salaries and other rights, obligations and duties, employment requirements, requirements for taking state exam.

## **VII PENAL PROVISION**

### **Misdemeanour**

#### **Article 41**

A legal entity shall be imposed a fine ranging between EUR 2,000 and EUR 20,000 if:

- 1) despite the special prosecutor` request it fails to submit the requested data on bank accounts and account balance within a set time-limit (Article 33 paragraph 2),
- 2) it fails to enforce the investigative judge`s decision (Article 33 paragraph 1).

Responsible person in a legal entity and a physical entity shall be imposed a fine ranging between EUR 500 and EUR 2,000 for committing the misdemeanour referred to in paragraph 1 of this Article.

## **VIII TRANSITIONAL AND FINAL PROVISIONS**

### **Application of Laws to the Initiated Procedures**

#### **Article 42**

The cases falling within jurisdiction of the Special Public Prosecutor`s Office which were within jurisdiction of other public prosecutor`s offices shall be concluded by the time this Law enters into force by the public prosecutor`s offices which had jurisdiction thereof under the regulations that were valid before entry of this Law into force.

### **Take-over of Cases**

#### **Article 43**

The cases falling within jurisdiction of the Special Public Prosecutor`s Office which were within jurisdiction of the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes at the Supreme Public Prosecutor`s Office shall be taken over by the Special Public Prosecutor`s Office within 30 days from the day of election of the chief special prosecutor, i.e. special prosecutor.

### **Take-over of Tasks**

#### **Article 44**

Within 30 days from the day of election of the chief special prosecutor, i.e. special prosecutor, the Special Public Prosecutor`s Office shall take over tasks from the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes at the Supreme Public Prosecutor`s Office, the employees responsible for carrying out these tasks, as well as the equipment, funds and official documents.

### **Time-limit for Rendering Decision on the Number of Special Prosecutors**

#### **Article 45**

Decision on the number of special prosecutors at the Special Public Prosecutor`s Office shall be rendered by the Prosecutorial Council within 30 days from the day on which this Law enters into force.

### **Time-limit for Public Advertisement**

#### **Article 46**

The Prosecutorial Council shall publish public advertisement for election of the chief special prosecutor and special prosecutors within 15 days from the day on which the decision referred to in Article 45 of this Law has been rendered.

**Act on Internal Organisation and Job Descriptions****Article 47**

The act on internal organisation and job descriptions of the Special Public Prosecutor's Office shall be passed within 60 days from the day on which the decision referred to in Article 45 of this Law has been rendered.

**Application of Regulations****Article 48**

The provision of Article 81 of the Law on Public Prosecution Service (Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08, 39/11 and 46/13) shall be applied until adoption of the law that will regulate salaries in public sector.

**Entry into Force****Article 49**

This Law shall enter into force on the eighth day following the day of its publication in the Official Gazette of Montenegro.

## **R A T I O N A L E**

### **I CONSTITUTIONAL BASIS FOR ADOPTION OF THE LAW**

Constitutional basis for the adoption of the Law on Special Public Prosecutor's Office is contained in the provision of Article 16 paragraph 1 item 3 of the Constitution of Montenegro which stipulates the law shall, in accordance with the Constitution, regulate the manner of establishment, organization and competences of the authorities and the procedure before those authorities, if so required for their operation.

### **II REASONS FOR ADOPTION OF THE LAW**

Within the overall democratic processes in Montenegro, which include changes in the political, economic and legislative system, fight against corruption and organized crime represents a significant part thereof. In the previous period, Montenegro has made significant progress in harmonizing national legislation on the fight against corruption and organized crime, notably by the introduction of international standards and mechanisms into the Criminal Code and Criminal Procedure Code.

Pursuing the reform goals established the Strategy for the Reform of the Judiciary 2014-2018 within the objective of strengthening the efficiency of the judiciary, the drafting of the Law on Special Public Prosecutor's Office was initiated in order to create the legal basis for the establishment of Special Public Prosecutor's Office, as a separate public prosecutor's office for fight against organized crime and corruption.

Also, in accordance with the new approach of the European Commission, Montenegro's accession negotiations began with Chapters 23 and 24, which relate to the judiciary and fundamental rights and justice, freedom and security. During the process of analytical screening, the specific needs for further specialization of authorities for fight against corruption and organized crime were identified.

Accordingly, the need for the adoption of the Law on the Special Public Prosecutor's Office is envisaged in the Action Plan for Chapter 23 and Action Plan for Chapter 24 which are the most important strategic and reform documents in the field of fight against corruption and organized crime, containing specific objectives and measures to be implemented in the process of Montenegro's integration into the European Union. The aforementioned action plans envisage, as one of the measures for the establishment of independent, effective and specialized authorities for fight against corruption and organized crime, the adoption of the Law on Special Public Prosecutor's Office and the establishment of the Special Public Prosecutor's Office (AP 23 measure 2.2.1.4 and AP 24 measure 6.2.8).

Based on the foregoing, there are several reasons why it was necessary to draft the Law on the Special Public Prosecutor's Office, and by its adoption Montenegro will fulfill its obligations under international conventions and respond to the needs of rationalizing judicial network which requires a higher degree of specialization in order to more efficiently implement the effective measures in the field of organized crime and corruption.

### **III COMPLIANCE WITH THE EUROPEAN LEGISLATION AND RATIFIED INTERNATIONAL CONVENTIONS**

In accordance with the international standards which contained in the documents of the Council of Europe and the United Nations, numerous solutions have been proposed in the Law on Special Public Prosecutor's Office.

The most important international standards of the Council of Europe are taken into account are:

- The Convention for the Protection of Human Rights and Fundamental Freedoms;
- Council of Europe Convention on Action against Trafficking in Human Beings 2005;
- Recommendation R(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system.

The most important international standards of the United Nations taken into account are:

- The Universal Declaration of Human Rights;
- The International Covenant on Civil and Political Rights;
- United Nations Convention against Corruption 2003;
- United Nations Convention against Transnational Organized Crime 2000.

The EU standards are contained in the founding treaties, the Charter of Fundamental Rights of the European Union. However, it should be noted that there is no secondary legislation which regulates in detail the principles of organization of the national judicial systems of EU member states, which is understandable, taking into account the principles on which the EU was established and its functioning. Thus, it can be noted that the EU member states, in terms of autonomy and organization of own judicial systems, rely on international standards developed within the framework of the Council of Europe and the United Nations.

Expert missions organized through the support of TAIEX program were of particular importance for the harmonization of the Law on the Special Public Prosecutor's Office with the international standards.

The Law on the Special Public Prosecutor's Office has been harmonized with the comments of the experts of the European Commission and the comments of the experts of the Venice Commission Mr. Michael Fernando (Malta), Mr. Guido Neppi Modona, (Italy), Mr. Jorgen Sorensen (Denmark), Mr. Tudorel Toader (Romania) and Mr. James Hamilton (former member of the Venice Commission from Ireland).

### **IV EXPLANATION OF BASIC LEGAL INSTITUTES**

#### **I Basic Provisions**

The basic provisions of the legal text stipulate, inter alia, that the scope of this Law shall be the organization and jurisdiction of the Special Public Prosecutor's Office as well as who manages and prosecutes crimes within the jurisdiction of the Special Public Prosecutor's Office. The Special Public Prosecutor's Office's is the public prosecutor's office established for the territory of Montenegro with seat in Podgorica, whose funds for the operation shall be provided in the budget of the Public Prosecution Service. It is stipulated that the Supreme Public Prosecutor's Office shall be competent to supervise the operation of the Special Public Prosecutor's Office. Also, the basic provisions stipulate that the terms used in this Law for physical entities in masculine gender shall mean the same terms in feminine gender. Provisions of the Law on Public Prosecution Service shall apply accordingly to the matters that are not regulated under this Law.



## **II Organization of the Special Public Prosecutor's Office**

Special Public Prosecutor's Office shall have within its internal organization divisions and services. Divisions shall be organised to carry out tasks involving criminal prosecution, financial investigations, analytics and research and international cooperation. Services may be set up for public relations, as well as for the purpose of carrying out professional, administrative and technical tasks.

The Law stipulates the obligation of the chief special prosecutor to submit six-month activity report to the supreme public prosecutor, and the separate, i.e. periodic reports at the request of the supreme public prosecutor, or of the Prosecutorial Council.

## **III Election of the Chief Special Prosecutor and Special Prosecutor**

To the position of the chief special prosecutor may be elected a person who is a Montenegrin citizen, medically fit, graduated from law school, passed the judicial exam, who has the working experience as a public prosecutor, a judge or an attorney prescribed by the Law, and has special knowledge and skills to work on cases within the jurisdiction of the Special Public Prosecutor's Office. The Law prescribes the same requirements for the selection of special prosecutors, except for the required years of experience as a public prosecutor, a judge or an attorney.

The Prosecutorial Council shall elect the chief special prosecutor and special prosecutors on the basis of a public advertisement in accordance with the prescribed criteria for selection. Prior to adoption of the decision on the selection of the chief public prosecutor or special prosecutors from the list of candidates who meet the statutory requirements, the Prosecutorial Council shall conduct an interview with the candidates and obtain the opinion on candidates as follows: from the enlarged session of the Supreme Public Prosecutor's Office for the public prosecutor, from the enlarged session of the Supreme Court of Montenegro for the judge, and from the steering board of the Bar Association for the attorney.

The chief special prosecutor shall be elected for a term of office of five years and the same person may be elected to the position of the chief special prosecutor two times at the most. The chief special prosecutor shall continue to work as special prosecutor at the Special Public Prosecutor's Office upon expiry of the period which he/she has been elected for and upon termination of office. The special prosecutors shall serve life tenure. The Prosecutorial Council may, at the chief special prosecutor's request, reassign the public prosecutor to the Special Public Prosecutor's Office for a certain period of time which may last up to two years, in order for him/her to carry out tasks of urgent nature or in the event of an increased workload. The Law on Special Public Prosecutor's Office stipulates the appropriate application of the provisions of the Law on Public Prosecution Service relating to the public advertisement procedure, procedure upon applications, taking an oath and taking an office, rights of the candidate and court protection of the candidate.

## **IV Relationship between the Special Public Prosecutor's Office and Police Administration**

Police tasks related to the criminal offences falling under jurisdiction of the Special Public Prosecutor's Office shall be carried out by police officers employed in a special organisational unit of the Police Administration for work with the Special Public Prosecutor's Office. The head of the Police Division shall be appointed by the director of the Police Administration subject to the consent of the chief special prosecutor. The Law prescribes the requirements for the head and police officers of the Police Division.

If the police officer fails to execute order given by the special prosecutor in the case he/she has been assigned, the chief special prosecutor shall file a motion to initiate disciplinary proceedings against him/her in accordance with the law governing interior affairs. The head and police officer may not be reassigned to another position or to carry out other tasks in the Police Administration without the chief special prosecutor's consent.

## **V Investigators**

The Law stipulates that investigators are civil servants employed in administrative authorities responsible for tax affairs, customs affairs, affairs involving prevention of money laundering and terrorist financing and inspection affairs, to whom the chief special prosecutor may delegate certain tasks for the purpose of investigating criminal offences that fall within jurisdiction of the Special Public Prosecutor's Office.

The investigator shall take actions by executing the special prosecutor's order and following his/her instructions, in accordance with the rules of his/her profession, as well as in accordance with the Criminal Procedure Code. Failure to execute the special prosecutor's order and acting in contravention of the special prosecutor's order and instructions shall constitute severe breach of official duty by the investigator. In particularly complex cases the chief special prosecutor may form a special investigative team which, besides special prosecutor, may also comprise police officers from the Police Division, investigators and civil servants from another competent authority, until the indictment takes legal effect.

In carrying out the tasks falling within his/her jurisdiction, the special prosecutor may request from administrative authorities responsible for tax affairs, customs affairs, affairs involving money laundering and terrorist financing as well as from the other state administrative authorities to control operations of a legal or physical entity, obtain certain documents, data and to take other actions falling within their mandate. When the administrative authority responsible for the prevention of money laundering and terrorist financing has established that there are grounds for suspicion that funds, income and assets have been obtained by committing a criminal offence falling under the jurisdiction of the Special Public Prosecutor's Office it shall submit these data to the special public prosecutor.

The Law stipulates that if there are grounds for suspicion that a person disposes of or has disposed of an income in his/her bank accounts which was generated by committing criminal offences falling under the jurisdiction of the Special Public Prosecutor's Office, while such income is relevant for preliminary inquiry and investigation and is subject to seizure, the bank shall, at the special prosecutor's request, submit data on these accounts and on the account balance. The investigative judge may, at the special prosecutor's request, bind the bank by a decision to monitor payment transactions in a person's accounts and to report on a regular basis, during the period determined for monitoring payment transactions, to the special prosecutor about the transactions effected in the account which is monitored. Data requested by the special prosecutor from other authorities shall be submitted via a secure information network i.e. a safe communication channel. With the aim of ensuring access to data from other information systems of other state authorities and state administrative authorities, the Special Public Prosecutor's Office shall provide for technical conditions for IT protection of such data.

## **VI Employees of the Special Public Prosecutor's Office**

The Special Public Prosecutor's Office shall have a necessary number of advisors, other civil servants and state employees which shall be established in the act on internal organisation and job descriptions. Background check of advisors, civil servants and state employees shall be carried out in case of employing them in accordance with the law governing data secrecy and they shall give consent to the carrying out of the background check.

Advisor may be a person who graduated from law school, passed judicial exam and has at least five years of work experience. Advisors shall assist the special prosecutor in his/her work, prepare draft documents, enter citizens' reports, briefs and statements into the records, carry out other technical tasks prescribed by the law and regulations adopted under the law either autonomously or under the supervision and by following instructions of the special prosecutor. If they are given the power by the special prosecutor, advisors may also conduct certain evidentiary procedures.

The Special Public Prosecutor's Office may hire economists, accounting-finance officers and members of other relevant professions with relevant work experience in these areas who shall assist the special prosecutor in his/her work regarding the matters for which expert knowledge of these fields is required.

## **VII Penal provision**

The Law stipulates that a legal entity shall be imposed a fine ranging between EUR 2,000 and EUR 20,000 if despite the special prosecutor's request it fails to submit the requested data on bank accounts and account balance within a set time-limit or if it fails to enforce the investigative judge's decision. Responsible person in a legal entity and a physical entity shall be imposed a fine ranging between EUR 500 and EUR 2,000 for committing the misdemeanour.

## **VIII Transitional and Final Provisions**

The transitional and final provisions stipulate that the cases falling within jurisdiction of the Special Public Prosecutor's Office which were within jurisdiction of other public prosecutor's offices shall be concluded by the time this Law enters into force by the public prosecutor's offices which had jurisdiction thereof. The cases which were within jurisdiction of the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes at the Supreme Public Prosecutor's Office shall be taken over by the Special Public Prosecutor's Office within the time-limit prescribed by this law. The decision on the number of special prosecutors at the Special Public Prosecutor's Office shall be rendered by the Prosecutorial Council within 30 days from the day on which this Law enters into force, which shall be followed by the publication of a public advertisement by the Prosecutorial Council in accordance with this law. Within the time-limit prescribed by the Law, the Special Public Prosecutor's Office shall take over tasks from the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes at the Supreme Public Prosecutor's Office, the employees responsible for carrying out these tasks, as well as the equipment, funds and official documents, upon the election of the chief special prosecutor and special prosecutors. Also, transitional and final provisions of the Law on Special Public Prosecutor's Office stipulate that this Law shall enter into force on the eighth day following the day of its publication in the Official Gazette of Montenegro.

## **V ESTIMATION OF FUNDS FOR IMPLEMENTATION OF THE LAW**

It is envisaged that this Law shall enter into force on the eighth day from the day of its publication in the Official Gazette of Montenegro. By entering into this force of this Law, costs will be incurred for which it is necessary to provide additional funds in the budget of Montenegro. The Division for suppressing organized crime, corruption, terrorism and war crimes, formed within the Supreme Public Prosecutor's Office (the Division) is now in responsible for suppressing organized crime, corruption, terrorism and war crimes. With the entry into force of the Law on Special Public Prosecutor's Office, a new Special Public Prosecutor's Office will be established. In order to implement this Law, it is necessary to provide additional funds in the budget in the amount of EUR 150.000,00 for the establishment of the Special Public Prosecutor's Office.

## **VI REASONS FOR ADOPTION OF THE LAW IN A SUMMARY PROCEDURE**

Pursuant to Article 151 of the Rules of Procedure of the Parliament of Montenegro (Official Gazette of the Republic of Montenegro 51/06, 66/06 and Official Gazette of Montenegro 88/09, 80/10, 39/11, 25/12 and 49 / 13), we deem necessary that the Proposal for the Law on Special Public Prosecutor's Office be adopted in a summary procedure, i.e., simultaneously with Proposal for the Law on Public Prosecution Service, for which adoption in a summary procedure is also envisaged given that it represents one of the five priority issues identified by the European Commission in period after the Progress Report in the field of fight against corruption. Accordingly, and given the fact that the Proposal for the Law on Special Public Prosecutor's Office refers to the Proposal for the Law on Public Prosecution Service in all matters which are not regulated by this Law, it is necessary to adopt this Law also in a summary procedure.

**STATEMENT ON COMPATIBILITY OF MONTENEGRIN  
WITH THE RELEVANT EU REGULATIONS**

<b>Statement identification number</b>		<b>MP-IU/PZ/14/18</b>
<b>1. Draft/Proposal of regulation</b>		
- In Montenegrin	Predlog zakona o Specijalnom državnom tužilaštvu	
- In English	Proposal for the Law on Special Public Prosecutor's Office	
<b>2. Information on the regulation drafter</b>		
a) State authority drafting the regulation:		
State authority	Ministry of Justice	
- Sector/department	Directorate for Judiciary	
- Responsible person (name, last name, telephone, e-mail)	Branka Lakočević, Director-General of the Directorate for Judiciary t. 407 503 e. branka.lakocevic@mpa.gov.me	
- Contact person(name, last name, telephone, e-mail)	Merima Baković, Head of Criminal Legislation Division t. 407 504 e. merima.bakovic@gov.me	
b) Legal person with public authorisation to draft and implement the regulation:		
- Legal person	/	
- Responsible person (name, last name, telephone, e-mail)	/	
- Contact person(name, last name, telephone, e-mail)	/	
<b>3. State authority implementing/enforcing the regulation:</b>		
- State authority	courts, prosecutor's offices	
<b>4. Harmonisation of the draft/proposal of regulation with the provisions of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part (hereinafter SAA)</b>		
a) Provisions of the SAA the regulation is being harmonised with:		
Title VII, Justice, Freedom and Security, Article 80, Reinforcement of institutions and rule of law		
b) The level of fulfilment of commitments arising from the abovementioned provision of the SAA:		
<input checked="" type="checkbox"/>	fully fulfils	
<input type="checkbox"/>	partly fulfils	
<input type="checkbox"/>	does not fulfil	
c) Reasons for partial fulfilment or failure to fulfil the commitments arising from the abovementioned provisions of the SAA		
/		
<b>5. Connection of the draft/proposal of regulation with the National Programme for Integration of Montenegro into the EU (hereinafter NPI)</b>		
- NPI for the period:	2014-2018	
- Chapter, subchapter:	/	
- Deadline for adoption of the regulation:	/	
- Note:	Adoption of the Law on Special Public Prosecutor's Office is not envisaged by the National Programme for Integration of Montenegro into the EU	
<b>6. Harmonisation of the draft/proposal of regulation with <i>Acquis Communautaire</i></b>		
a) Harmonisation of the draft/proposal of regulation with the primary sources of the EU law		
TFEU, Chapter I, General Provisions, Article 2 and Article 6		

Charter of Fundamental Rights of the European Union, Title VI Justice, Article 47, Right to an effective remedy and to a fair trial	
b) Harmonisation of the draft/proposal of regulation with the secondary sources of the EU Law:	
There is no provision of the secondary sources of the EU law with which the proposal for the regulation could be compared for the purpose of ascertaining the level of its conformity	
c) Harmonisation of the draft/proposal of regulation with other sources of the EU Law:	
There is no provision of this type of the EU law with which the proposal for the regulation could be compared for the purpose of ascertaining the level of its conformity	
<b>6.1. Reasons for partial harmonisation or failure to harmonise and the envisaged timeframe for achieving the full harmonisation:</b>	
/	
<b>7. Please note if there are no relevant EU regulation to provide the harmonization with</b>	
/	
<b>8. Harmonisation of draft/proposal of regulation with other sources of the international law:</b>	
The Convention for the Protection of Human Rights and Fundamental Freedoms	
Council of Europe Convention on Action against Trafficking in Human Beings (2005)	
Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system	
The Universal Declaration of Human Rights	
the International Covenant on Civil and Political Rights	
United Nations Convention against Corruption (2003)	
United Nations Convention against Transnational Organized Crime (2000)	
<b>9. Please note whether the mentioned sources of the EU and the international law are translated into Montenegrin language (translation to be provided in the annex):</b>	
Abovementioned sources of international law are translated into Montenegrin language	
<b>10. Please note whether the draft/proposal of regulation from item 1 hereof is translated into English language (translation in the annex):</b>	
Proposal for the Law on Special Public Prosecutor's Office is not translated into English language.	
<b>11. Participation of the consultant in preparation of draft/proposal of regulation and their opinion on harmonisation:</b>	
The following experts of the European Commission participated in the preparation of the Proposal for the Law on Special Public Prosecutor's Office: Mr. Dragan Novosel, First Deputy Chief Public Prosecutor of the Republic of Croatia, Mr. Fabio Licata, judge of the Criminal Division of the Tribunal in Palermo, Republic of Italy and Mr. Carlo Alberto Giusti from the Ministry of Justice of the Republic of Italy.	
<b>Signature</b> / Authorised person within the regulation drafter Duško Marković	<b>Signature</b> / Minister of Foreign Affairs and European Integration
Date: 1 December 2014	Date:
(signed, stamped)	(signed, stamped)

**Annexes to the form:**

1. Translation of the EU measures (if there are any)
2. English version of the draft/proposal of Montenegrin regulation (if it has been translated)

**TABLE OF CONFORMITY**

<b>1. Identification number (IN) of draft/proposal of regulation</b>		<b>1.1. Compatibility Statement Identification Number and the date of the adoption of the regulation at the Government session that is the adoption of the regulation</b>		
MP-TU/PZ/14/18		MP-IU/PZ/14/18		
<b>2. Source of the EU law and CELEX</b>				
/				
<b>3. Draft/proposal of Montenegrin regulation</b>				
<b>In Montenegrin</b>		<b>In English</b>		
Predlog zakona o specijalnom državnom tužilaštvu		Proposal for the Law on Special Prosecutor's Office		
<b>4. Harmonisation of the draft/proposal of regulation with the sources of the EU law</b>				
a) Provision and text of the provision of the source of the EU law (article, paragraph, item)	b) Provision and text of the provision of the Montenegrin regulation (article, paragraph, item)	c) Level of harmonization of the provision of the draft/proposal of a Montenegrin regulation with the provision of the source of the EU law	d) reason for partial harmonisation or lack of harmonization	e) timeframe for achieving the full harmonisation