

Introduction to Anti-Corruption Policies in the Western Balkans

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1. Albania

1.1 Criminal profiling on corruption in domestic law

In Albania, active and passive corruption in the private sector are ruled, respectively, by article 164/a and 164/b of the **Albanian Criminal Code**¹. **Active private corruption** has to be recognized so that *“the **direct or indirect promise, offer, or giving** to a person, who exercises a **management function** in a **commercial company** or who works in any other position in the **private sector**, of any irregular benefit for himself or a third person, in order to act or not to act contrary to his duty, is punished with **imprisonment of three months up to three years**”*. **Passive private corruption** is meant in a way that *“direct or indirect soliciting or taking of any irregular benefit or of any such promise, for himself or a third person, or accepting an offer or a promise that comes from the irregular benefit, of the person that exercises a managerial function or works in whatever position in the private sector, with the purpose to act or not to act contrary to his duty or function, is sentenced with imprisonment term of **six months up to five years**”*.

Similarly, **active and passive bribery** by public officials constitutes a criminal offence by virtue of Articles 259, 260 and 319/a. Article 259 ACC may be regarded as the general provision on

¹ Law no. 7895, Criminal Code of the Republic of Albania, dated 27.1.1995.

passive corruption by public officials. It's worth mentioning that the core elements of the human behavior which is criminalized in Article 259 ACC are the same for the other two provisions. The only aspects which differ are the perpetrators and the severity level of the sanctions. Indeed, Article 260 ACC criminalizes the passive bribery – defined in the same words of Article 259 ACC – of senior state officials or local elected officials. The sanctions are a term of imprisonment of four to twelve years and a fine from one million to five million Lekë. **Remarkably**, the ACC **does not use the term 'public official'** in the definition of the offence of the passive bribery of public officials. One of the elements of the offence of passive corruption is that the person in question should *“act or refrain from acting in the exercise of his duty or function”*. The Albanian courts seem to have taken a **formalistic view** since it is required that the public official is formally authorized to carry out the official act, causing a evident **narrowing** of the **spectrum** of this criminal offence. Article 319/a ACC deals with **passive corruption by judges**, prosecutors and other officials of the justice system and it imposes a term of imprisonment of three to ten years and a fine from eight hundred thousand to four million Lekë. The **Criminal Procedural Code**² was **amended** in **2004** to improve the regulation of financing of political parties, conflict of interest, rules of ethics in the public administration, and the use of special investigation means. A **Code of Ethics**³ was passed in 2003 and regulates the conduct of civil servants and high-ranking officials are required to declare their assets.

1.2 Tools to prevent and fight the phenomenon

The **Government Commission for Fight against Corruption (GCFAC)** was established in 1999 to ensure co-ordination between Government institutions in the fight against corruption. It is composed of 13 government representatives and headed by the Prime Minister. The GCFAC is mandated to implement the National Anti-corruption plan. Good progress was overall made quite recently with the adoption of the new **Action Plan 2018-2020** for the implementation of the Inter-sectoral Strategy against Corruption, the amendments to **the Law on the Declaration and Audit of Assets**⁴, the **Law on Public Procurement**⁵ as well as the adoption of the **Code of Conduct** for members of **Parliament**. The latest Action Plan includes measurable indicators, which should enable monitoring of progress, as endorsed by the inter-ministerial working

² Law no. 7905, Criminal Procedure Code of the Republic of Albania, dated 21.3.1995.

³ Law no. 9131, Public Administration Ethics, dated 8.9.2003.

⁴ Law no. 9049 on the Declaration and Audit of Assets, dated 10.04.2003, as amended by Law no. 42/2017.

⁵ Law no. 9643 on Public Procurement, dated 20.11.2006, as amended by Law no. 182/2014.

group responsible for preparation, drafting and follow-up of implementation of the anti-corruption strategy. All relevant activities are **coordinated** by the **Department for Internal Administrative Control and Anti-Corruption (DIACA)**, which also performs internal controls on all administrative bodies.

In Albania, there is no centralized main agency responsible for anti-corruption, however the institution of the **National Coordinator for Anti-corruption (NCAC)** was established to coordinate the anti-corruption activities of the Government and independent institutions at the central and local level. The Ministry of Justice, which now has been serving as the NCAC since September 2017, is currently vested with the role of the **Secretariat of the Inter-ministerial Coordinating Committee for the Implementation of the Action Plan** established in 2018. The Inter-ministerial Committee is chaired by the Minister of Justice and is composed of 10 deputy ministers representing their respective ministries. Furthermore a network of focal points was established in all line ministries and independent institutions, which will monitor and guide the relevant officials in the implementation of the Anti-Corruption Strategy and report to the National Anti-Corruption Coordinator. The main preventive anti-corruption bodies in Albania are the Anti-Corruption Task Force and the High Inspectorate of Declaration and Audit of Assets and Conflict of Interests. The **Anti-Corruption Task Force** was created in 2005 as a political body at ministerial level and it is mainly responsible for defining strategic objectives, priorities and measures in the fight against corruption and also for ensuring consistency between anti-corruption entities and policies within the different ministries. **High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest (HIDAACI)** has been established as an independent body in charge of collecting assets declaration and identifying cases of conflict of interest regarding public officials. The HIDAACI is entitled of detecting **conflicts of interest and checking asset declarations**, role **strengthened** by the adoption of the **Law on whistle-blowing and whistle-blower protection** ⁶ and the implementation of the vetting process. The State Audit Commission and internal auditing units within the different institutions of the Government were originally mandated to inspect, assess and report alleged cases of corruption but increasingly tend to focus on broader system assessments and advice.

Regarding the **investigation** attributions, these activities are performed by the Prosecutor's Office for Serious Crimes and the General Directorate of the State Police within Ministry of Internal Affairs. As part of the country's anti-corruption efforts, on September 2014 it was created a new body called the Section on Corruption and Assets Investigation at Serious Crime

⁶ Law no. 60/2016, dated 02.06.2016.

Prosecution Office which aims to investigate the cases of corruption of judges, prosecutors and senior officials. The only body with the power to investigate and prosecute corruption cases in Albania is the Prosecutor's Office.

An **Access to Information Law**⁷ was adopted in **1999**. According to the law, every individual has the right to ask for information and to be informed about public documents as well as the right to be informed about the activity of the administration and individuals that exercise public duties. However, only a limited number of documents can be made available without a formal request from the officials. Political parties must abide by the **Law on Political Parties**⁸ which includes provisions on **financing of political parties** in general. Specific rules on **financing of election campaigns** are set out in the **Electoral Code**⁹.

1.3 International cooperation

The **upgrading** of the **legislative framework** for the fight against corruption in Albania was first manifested in the **ratification** of two Council of Europe conventions – **the Criminal Law Convention against Corruption (2001)** and **the Civil Law Convention against Corruption (2000)**. In **2006**, Albania also became party to the **United Nations Convention against Corruption (UNCAC)**. Since April **2001** Albania has been a full member of **GRECO** (the Council of Europe's Group of States against Corruption) that monitors the implementation of the Council of Europe's conventions on fight against corruption.

Since its establishment in 2000, **the Regional Anti-corruption Initiative (RAI)**, powered by OSCE and whose Albania is a Member State, acts as a regional process through which governments of the region, local and international civil society organizations, bilateral aid agencies, and international organizations combine their efforts to help curb corruption in South Eastern Europe. Serving as a general framework for coordination and optimization of the efforts made by the SEE countries, Regional Anti-Corruption Initiative has a multidisciplinary approach by building its activities upon five main pillars without prejudice to existing international commitments including those deriving from EU status: i) Adoption and implementation of international anti-corruption instruments as well as implementation of regional agreements; ii) Promotion of good governance and reliable public administration; iii)

⁷ Law no. 8503 on the right to information about official document, dated 30.6.1999, repealed by Law no. 119/2014, Right to Information, dated 18.9.2014.

⁸ Law no. 8580 on Political Parties, dated 17.2.2000.

⁹ Law no. 10 019, The Electoral Code of The Republic of Albania, dated 29.12.2008.

Strengthening of national legislation and promotion of the rule of law; iv) Promotion of transparency and integrity in business operations; V. Promotion of an active civil society and raising public awareness. In addition, Albania ratified in 2000 **Charter on the Organization and Functioning of the Regional Center of the South-East European Cooperative Initiative (SECI)** in the fight against trans-border crime. SECI was founded in the late 1990s on the basis of multi-lateral and bilateral agreements, ratified by the 11 participating States in compliance with European standards and international agreements. Albania, Bosnia and Herzegovina, Moldova, Romania, Serbia and Montenegro, and the former Yugoslav Republic of Macedonia, entered into an agreement, **the Police Cooperation Convention for South-East Europe**, to enhance police cooperation and mutual assistance with respect to common security interests. In addition to general cooperation measures, the Convention addresses specific matters, including the exchange of information, liaison officers, training, cross-border surveillance, undercover investigations, joint investigation teams and cross-border cooperation. The Convention was signed on 5 May 2006.

The Albanian Parliament approved a **cooperation agreement with EUROPOL** (Law no. 9699/2007) in an effort to address the endemic phenomena of organized crime syndicates in the country. Following the conclusion of the **2013 Agreement on Operational and Strategic Cooperation with EUROPOL** (and the updated framework amended in September 2018), Albania has taken further steps to strengthen international police cooperation with EU law enforcement agencies and Member States. The reinforced international law enforcement cooperation led to several **large operations**, which resulted in the dismantling of some prominent organized criminal groups. Since its approach to EU, Albania continued to intensify judicial cooperation in criminal matters. The country signed a **cooperation agreement with EUROJUST** in October **2018**, which will allow for the exchange of personal data on operational cases. However, additional steps are still necessary for the agreement to enter into force.

2. Bosnia and Herzegovina

2.1 Criminal profiling on corruption in domestic law

Domestically, there are **four criminal codes in BiH** used at **different levels** of government (State level, Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District). For the record, Criminal **offences of corruption** and criminal **offences against official duty** are

respectively located in Chapter XIX of the **BiH Criminal Code**¹⁰ (Article 217-229), Chapter XXXI of the **Criminal Code of the Federation of BiH**¹¹ (criminal offences of bribery and criminal offences against official duty (Article 380 – 392), Chapter XXVII of the **RS Criminal Code**¹² (criminal offences against official duty, Articles 347 – 360) and Chapter XXXI of the **Criminal Code of the Brčko District**¹³ of BiH (criminal offences of bribery and criminal offences against official duty). This structure has created legislative inconsistency throughout the country and issues of jurisdiction often arise during the investigation and prosecution of corruption. Each of the criminal codes criminalizes several forms of corruption, including **active and passive bribery, concealment, embezzlement and misappropriation** (Conference of the State Parties to UNCAC 2015; GAN Integrity 2016). There are **some discrepancies in coverage** across the criminal codes. For example, concerning active bribery, third-party beneficiaries of the advantage are covered in the Criminal Code of BiH but not in the other criminal codes (Conference of the State Parties to UNCAC 2015). All levels of government have competences in the fight against corruption. The state-level anti-corruption agency has coordination functions; corruption prevention bodies exist also at all other levels of government. All judicial systems and law enforcement agencies are responsible for corruption repression. There are **no specific provisions related** to bribery in the **private sector** in Bosnia and Herzegovina; the provisions of Articles 217-218, BiH CC; Articles 380-381, FBiH CC; Articles 351-352, RS CC; and Articles 374-375, BD CC, apply since **they not only cover public officials, but also 'responsible persons'**. The **material elements of the offence**, as well as the applicable **sanctions**, described under bribery of domestic **public officials also** apply to bribery in the **private sector**. Having in mind that private sector entities can only operate and be registered in the territories of the Entities and the BD, the applicable provisions in this area are those contained in the Entity/BD Criminal Codes (i.e. Articles 380-381 CC FBiH, Articles 351-352 CC RS, and Articles 374-375 CC BD).

¹⁰ BiH Official Gazette 3/2003 with amendments to the Law as published in BiH OG no. 32/2003, 37/2003 54/2004, 61/2004, 3020/05, 53/2006, 55/2006, 32/2007, 8/2010, 47/2014, 22/2015, 40/2015 and 35/2018.

¹¹ Federation of BiH Criminal Code, FBiH Official Gazette no. 36/03 with amendments to the Law as published in FBiH Official Gazette no. 37/2003, 21/2004, 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016 and 75/2017.

¹² RS Official Gazette no. 64/17 with amendments to the Law as published in RS OG no. 104/2018.

¹³ BDBiH Official Gazette no. 33/2013, with amendments to the Law as published in OG BDBiH no. 26/2016, 13/2017 and 50/2018.

2.2 Tools to prevent and fight the phenomenon

The **Agency for the Prevention of Corruption and the Coordination of the Fight against Corruption** (APIK) was set up at State level in 2009 as an independent body, accountable to Parliament. It became operational only in 2014. Its mandate includes to develop the Anticorruption Strategy and Action Plan and monitor their implementation; design a uniform methodology for collecting data on civil servants' assets and for developing integrity plans; coordinate the work of public institutions in preventing and combating corruption; monitor implementation of anticorruption legislation, and conflict of interests. The Agency carries out some limited anti-corruption activities in the private sector, notably through the training of private persons in spotting corruption cases. It is also responsible for taking action upon receiving information on corruption-related acts and developing educational programs. Conversely, the entity **Prosecutor's Office** has a *special department for fighting corruption*, organised crime and the most serious forms of economic crime. However, the special department has not yet been established. Additionally, several agencies in Bosnia and Herzegovina work on anti-corruption, and responsibilities are divided among various ministries, agencies and offices. The competencies for investigating and prosecuting corruption are shared by the **State Investigation and Protection Agency** (SIPA) and the **Special Department for Organized Crime, Economic Crime and Corruption** within the Prosecutor's Office of Bosnia and Herzegovina. The **Ministry of Security** and in particular the State Investigation and Protection Agency may be considered the strongest mechanisms available to coordinate anti-corruption efforts in Bosnia and Herzegovina. SIPA is a State-level, internationally supported anti-corruption agency in charge of collecting and processing information of interest for the implementation of international laws and BiH criminal codes. SIPA's Criminal Investigation Department and its Financial Intelligence Department are responsible for the prevention, detection and investigation of criminal offences that fall under the jurisdiction of the Court of BiH.

The **Central Election Commission** is responsible for implementing the **Law on political party financing**¹⁴ throughout the country while the State-level **Law on the APIK**¹⁵ regulates the area of **corruption prevention**. The **Law on Whistleblower Protection in the Institutions of Bosnia-Herzegovina**¹⁶ provides administrative protection to all staff employed in the institutions and bodies established at state level. The legislation grants pre-emptive protection

¹⁴ BiH Official Gazette no. 22/2000, 102/2009 and 95/2012.

¹⁵ BiH Official Gazette no. 103/2009 and 58/2013.

¹⁶ BiH Official Gazette no. 100/2013.

to employees before retaliation may occur. **Anonymous reporting is allowed.** In the Republika Srpska entity, legislation on whistle-blower protection provides for judicial protection against retaliation and applies to all persons who report corruption in the public or private sector. It also provides for a reversed burden of proof, a non-exhaustive list of possible harmful consequences from which protection can be requested and access to an urgent court procedure. No legislation is in place in the Federation entity. In Brčko District, legislation on whistle-blower protection is in place and provides for administrative protection. The legislation on whistle-blower protection needs to be aligned with the new European *acquis* on this issue.

In BiH, the **asset disclosure** legal framework is dispersed across **multiple laws**, including the **Election Law**¹⁷ (for elected officials) and the **Law on High Judicial and Prosecutorial Council**¹⁸ (for judges and prosecutors). Income, real estate, moveable property and money are all required to be declared, but beneficial ownership is not. To step up anti-corruption efforts, new legislation needs to be adopted at all levels on the declaration of assets and conflict of interests in line with international standards, in particular relevant GRECO recommendations. At the State level, the **Law on Conflict of Interest**¹⁹ in the governmental institutions of Bosnia and Herzegovina is not in line with international standards. In the *Republika Srpska* entity, legislation on conflict of interests is in place but needs to be aligned with international standards. The Federation entity has legislation regulating conflict of interests which is not implemented due to legal uncertainty on the institution in charge. Similarly, the Brčko District has legislation on conflict of interests in the public institutions but is not implemented. The Sarajevo canton has a Law on asset declarations of public functions holders in the canton, covering conflict of interests.

The first **Freedom of Access to Information Act (FOIA)** was adopted by the Parliamentary Assembly of BiH in 2000, and entity-level acts were adopted a year later. A lack of proactive provisions has been cited as the biggest drawback of current access to information legislation. All three currently existing FOIAs (BiH, FBiH and RS) fail to make a large amount of information subject to mandatory disclosure (Rajko 2014). Some commentators cite lack of harmonization and inconsistency in the country's legal system relating to FOIA, which affects access to information. In addition, Transparency International BiH's 2016 survey on the implementation of FOIAs indicated a general disregard for the purpose and scope of the law, and a high degree

¹⁷ BiH Official Gazette no. 23/2001.

¹⁸ BiH Official Gazette no. 15/2002, FBiH Official Gazette no. 29/2002, RS Official Gazette no. 40/2002, BD Official Gazette no. 11/2002.

¹⁹ BiH Official Gazette no. 16/2002, as amended in Law on Amendments, BiH Official Gazette no. 41/2016.

of legal uncertainty in the process of seeking and obtaining information held by public authorities (Transparency International BiH 2016). There is also no effective oversight body to ensure timely implementation of the law or to impose sanctions for those violating the law.

There is **no legislation** to effectively prevent **corruption in the private sector** and no regulation of **lobbying**. Instead, the system of **public procurement** in BiH is regulated by the **Law on Public Procurement**²⁰ and an accompanying series of implementing regulations. According to Transparency International BiH, the civil society sector had great expectations of the new law, primarily in terms of addressing procurement practices prone to corruption and political pressure including: implementation of procurement procedures in contravention of legal requirements; misapplication and misuse of the exemption of protection of privacy; poor planning or lack of transparency in public procurement plans or complete absence thereof; among others. In any case, an anti-corruption **reform** is among the **key requirements** for EU accession, and the BiH **Anti-Corruption Strategy 2015-2019** recognizes that “[s]ince the fight against corruption requires attention at an early stage of the EU accession process ... Bosnia and Herzegovina needs to show determination in taking concrete, comprehensive and sustainable activities in countering corrupt practices” (Agency for the Prevention of Corruption and Coordination of the Fight against Corruption 2014).

2.3 International cooperation

Bosnia and Herzegovina is a full member of **GRECO** (the Council of Europe's Group of States against Corruption) since February **2000**. BiH is also **party to all international anti-corruption conventions**, including the two Council of Europe conventions – the **Criminal Law Convention against Corruption** (2002) and the **Civil Law Convention against Corruption** (2002). In 2006, Bosnia and Herzegovina became party to the **United Nations Convention against Corruption** (UNCAC), a consequence of which is the **Implementation Review Mechanism**, established in 2009 to enable all parties to review their implementation of UNCAC provisions through a peer review process. BiH is also a Member State of the **Regional Anti-Corruption Initiative**. Regarding the overall objectives, RAI has defined and will continue to undertake all necessary steps in achieving its specific programmatic objectives in Bosnia, such as: supporting the process of adoption and implementation of the UN Convention Against Corruption; supporting the process of developing and implementing regional and national anti-

²⁰ BiH Official Gazette no. 19/2005, 52/2005, 8/2006, 24/2006, 70/2006, 12/2009, 60/2010, 87/2013 and 39/2014.

corruption programs for raising public awareness; sharing the best practices in fighting high – level corruption; assessing the country anti-corruption needs and specific requirements; promoting the public – private partnership in reducing the impact of corruption within the business environment.

A **working arrangement** with the **EU Agency for Law Enforcement Training (CEPOL)** is in force. Cooperation with **INTERPOL** takes place through the National Contact Bureau in the Directorate for Coordination of Police Bodies. The country is signatory to the **Convention on Police Cooperation in Southeast Europe**. BiH did take part to the **IPA/2017 Project "Countering Serious Crime in the Western Balkans"** network.

3. Kosovo

3.1 Criminal profiling on corruption in domestic law

The Criminal Code of Kosovo that has been adopted on 6 July 2003 by the *United Nations Interim Administration Mission in Kosovo* (UNMIK) Regulation 2003/25 and was effective until 31 December 2012. A newer Criminal Code²¹ (CC) was adopted in 2012 and entered into force on 1 January 2013. The provisions on **public sector, bribery and related offences** are contained in Chapter XXIX of the CC which relates to criminal offences against official duty. Chapter XXXIV of the NCC on official corruption and criminal offences against official duty contains bribery and related offences. The new CC integrates new offences (in comparison to the old Code) such as misusing official information, conflict of interest, active bribery to foreign public officials and failure to report or false reporting of assets and gifts. **Active bribery** is criminalized in Article 429 which establishes **two forms of the offence**: a) bribery to induce an official to act or refrain from acting in accordance with his or her official duties (i.e. lawful official acts or omissions); b) bribery to induce an official to act or refrain from acting in violation of his or her official duties (i.e. unlawful official acts or omissions). Criminalization of **passive bribery** is provided for under Articles 428 and 422 of the Criminal Code. The relevant provisions differentiate **three types of conduct**: if the bribe has been requested or accepted before the performance of the official act: a) for an official to act or refrain from acting in accordance with his or her official duties (i.e. lawful official acts or omissions); b) for an official to act or refrain from acting in violation of his or her official duties (i.e. unlawful official acts or

²¹ Law no. 04/L-082 of 20.4.2012, Official Gazette of the Republic of Kosovo no. 19/2012,

omissions; c) if the bribe has been requested or accepted after the performance, or nonperformance, of the official act 422(3.2).

Active bribery, with respect to lawful official acts or omissions, is **punishable** by fine and imprisonment of up to three years (Article 429 (1), Criminal Code). In cases where the bribe is given to perform unlawful official acts or omissions, the punishment prescribed is imprisonment of three months to three years and a fine (Article 429 (2), Criminal Code). If the offence results in a benefit exceeding 15,000 EUR, the punishment is imprisonment of one to eight years and a fine (Article 429 (3), Criminal Code). **Passive bribery** with respect to lawful official acts or omissions is punished by fine and imprisonment of six months to five years (Article 428 (1), Criminal Code). In cases where the bribe is requested or received to perform unlawful official acts or omissions, the punishment prescribed is imprisonment of three (3) to twelve years and a fine (Article 428 (2), Criminal Code). In addition to the abovementioned principal punishments, the accessory punishments, which are set forth in the general part of the Criminal Code, are applicable inter alia to both active and passive bribery offences. In this context, Article 62 CC provides for types of accessory punishments, such as, inter alia, prohibition on exercising public administration or public services functions or confiscation. This prohibition is for one (1) to five (5) years (Article 65 CC) and it applies to physical persons who are punished by imprisonment. In addition to the general bribery provisions, there are some related specific provisions regarding active and passive bribery in relation to voting (Article 215 CC), entering into harmful contracts (Article 291 CC) and escape of persons deprived of liberty (Article 405 CC). Article 215.1 CC criminalizes promising, offering and giving any undue benefit or gift to any person, with the intent to influence that person to vote, not to vote, vote in favor or against a specific person or proposal, or to cast a void vote, in any election or referendum (sanction: imprisonment of 1 to 5 years).

The newly **amended Criminal Code**²² updated several corruption-related provisions, including on corruption in the private sector. It now contains extended statutory limitation periods for various serious crimes and 34 increased penalty levels for corruption and many organised crime acts and offences. The revision has brought most provisions of the code into line with best European practices and the *acquis*. While the **Criminal Procedure Code**²³ was substantially **revised**²⁴ and adopted by the government, it has not yet been passed into law by

²² Law no. 06/L-074, Official Gazette of the Republic of Kosovo no. 2/2019.

²³ Provisional Criminal Procedure Code of Kosovo, United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation 2003/26.

²⁴ Criminal Procedure Code, Law no. 04/L-123, Official Gazette of the Republic of Kosovo no. 37/2012.

the Assembly. The codes include provisions requiring the suspension and removal of public officials respectively indicted for and convicted of corruption.

3.2 Tools to prevent and fight the phenomenon

In **2008**, the government took additional **legislative steps** to combat corruption. Since March 2008, government officials are now required to **disclose** all gifts received, as stipulated by the **Law on Suppression of Corruption**²⁵. The Law foresees anticorruption measures and governs official person's duties regarding conflict of interest, incompatibility of functions and activities, prohibitions relating to gifts, supervision of assets and limitations on business activities set for public authorities. It also obliges official persons to report cases of corruption which come to their knowledge. It applies to the Prime Minister, ministers, general secretaries of the government and of ministries. Since 2003, a **Financial Intelligence Unit (FIU)** staffed by Italian Guardia di Finanza officers conducted financial inspections of public bodies and enterprises, as well as other organizations funded by the Kosovo Consolidated Budget. The FIU also has the authority to conduct criminal investigations.

The new **Law on extended powers of confiscation**²⁶ constitutes a substantial improvement in the fight against corruption. A new **Law on the Protection of Whistle-blowers**²⁷, adopted in November **2018**, brings the legal framework more into line with international standards. The **Anti-Corruption Strategy and Action Plan for 2018-22** were drafted after a consultation process and adopted by the government in March 2018, but they were not sent to the Assembly until October 2018 and have not yet been approved. Its implementation had been hampered by inadequate financing and a lack of measurable impact indicators.

The Kosovar **Anti-Corruption Agency**²⁸, created by (**2008**), is an independent and specialized body which deals with **preventing** and **combating** the corruption. The agency collects, analyzes and carries out preliminary administrative investigation of alleged cases of corruption and submits them to the prosecutor. It supervises the property of senior public officers and prevents the conflicts of interest. Kosovo has specialized institutions for fighting corruption: the National Coordinator against Economic Crime, the Anti-Corruption Coordinator appointed by the Chief State Prosecutor and the Police Directorate for the Investigation of Economic Crimes and Corruption, which maintains anti-corruption units at police stations and

²⁵ Law no. 34/2004 on Suppression of Corruption.

²⁶ Law no. 04/L-140 on the Extended Powers for Confiscation of Assets Acquired by Criminal Offense, Official Gazette of the Republic of Kosovo no. 5/2013.

²⁷ Law no. 06/L-085 on the Protection of Whistleblowers, Official Gazette of the Republic of Kosovo no. 22/2018.

²⁸ Law no. 03/L-063, Official Gazette of the Republic of Kosovo no. 65/2010.

headquarters. Each basic prosecution office has an anti-corruption prosecutor, and two prosecutors are appointed by the head of the Special Prosecution Office to handle high-level corruption cases. The serious crime departments of the Kosovo Basic Courts have so far dealt with all corruption cases. Following the adoption of the new Law on courts in December 2018, special departments in the Basic Court of Pristina and the Court of Appeals will handle all cases of the Special Prosecution Office including corruption cases.

3.3 International cooperation

The **lack of a contractual relationship** with EU and large international organizations such as **INTERPOL, EUROPOL, EUROJUST** or **GRECO**, prevents Kosovo to have effective collaboration with other countries. Due to status-related issues, international joint cases can currently only be opened towards EULEX and United Nations Mission in Kosovo (**UNMIK**). Same mechanism applies for any requested judicial cooperation. Kosovo is participating to the **IPA/2017 Project "Countering Serious Crime in the Western Balkans"**. Kosovo's application to join Interpol was rejected at the General Assembly meeting in November 2018. A working arrangement concerning strategic cooperation with Europol is being negotiated. Kosovo Police participated in joint operations with EU Member States under the **European Multidisciplinary Platform Against Criminal Threats (EMPACT)**, including operational activities related to migrant smuggling and firearms. Kosovo Police cooperates on a bilateral basis with some EU Member States. From the institutional level perspective, combating organized crime and corruption have been inter alia dedicated to a particular **investigative body** – the **Special Prosecution Office** – as well as to the European Union Rule of Law Mission in Kosovo (**EULEX**). In Kosovo, **corruption risk assessment** was conducted for the first time in November 2012 in sectors such as tax administration, health and the judiciary. In Albania, corruption risk assessments are not generally conducted, although the current anti-corruption strategy makes it a priority. Under the Project against Corruption in Albania (PACA), funded by the EU and implemented by the Council of Europe, a risk assessment overview and document were drafted. However, there is no corruption proofing of legislation in Albania — or in Kosovo or Bosnia and Herzegovina. However, Albania's Draft National Strategy against Corruption 2014-17 specifies corruption proofing as a means for the government to strengthen the fight against corruption.

The 2015 Procedures on Mutual Legal Cooperation agreed between Belgrade and Pristina form the basis for judicial cooperation between judicial authorities in Kosovo and Serbia. Most other countries that do not recognise Kosovo's independence have voluntarily accepted the

EU's facilitating role. However, a **lack of cooperation by some non-recognising states** has been observed, resulting in cases of impunity.

4. MONTENEGRO

4.1. Criminal profiling of corruption in domestic law

In Montenegro, the legal framework of **national legislation** for combating **corruption** has to be depicted into the existing criminal legislation with special a mention to the provisions against **public officers' bribery**, included in articles 423 and 424 of the Montenegrin **Criminal Code**²⁹ of 2003. Conversely, the criminalization of bribery in the **private sector** can be found in Articles 276/a and 276/b CC regarding entities engaged in an economic activity but these provisions on private bribery do apply as laid out in Articles 423 (6) and 424 (5). Indeed, with particular reference to the range of persons covered by the bribery provisions, "**any person**" may be the perpetrator of the bribery offence, irrespective of whether they are formally vested with a certain degree of responsibility in the private entity. Likewise, it is no longer required that the act is detrimental to the business organization; the offence could also be committed to benefit the organization where the bribe-giver/bribe-taker works. The authorities stress that the elements of the offence described under bribery of domestic public officials also apply to bribery in the private sector. Nevertheless, different terminology is used to define bribes, i.e. 'gift', 'unlawful benefit', "unlawful material benefit". As for the breach of duty requirement, Articles 276/a and 276/b CC require an act to be detrimental to the business organization which the bribe-giver/bribe-taker represents or to another person ("to the detriment of his/her business organization or another person"). The applicable sanctions in respect of active and passive bribery of domestic public officials apply to the offences of bribery in the private sector (3 to 5 years) but the maximum penalties for passive bribery in the public sector may range up to 8-12 years' imprisonment, and even 15 years' imprisonment if the public official committed the bribery offence in relation to the uncovering of a criminal offence, initiation or conduct of a criminal proceeding, pronouncement or enforcement of criminal sanctions. The

²⁹ Official Gazette of the Republic Montenegro no. 70/2003, 13/2004, 47/2006 and Official Gazette of Montenegro no. 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015, 44/2017 and 49/2018.

amendments to the **Law on Criminal Procedure** were adopted in June 2015³⁰. They introduced more rigid mechanism for review of prosecutorial decisions referring to dismissal of criminal charges. Notably, the fight against corruption and other crimes was strengthened in **2008** through the establishment of specialized departments in the high courts for organized crime, corruption, war crimes and terrorism.

4.2. Tools to prevent and fight the phenomenon

In Montenegro, the **State Prosecutor's Office**³¹ is a unique and independent State organ which prosecute offenders for crimes and other punishment acts *ex officio* (Article 136 of Montenegrin Constitution). A relatively new **Special Prosecutor** to fight against corruption (as well as organized crime, war crimes, terrorism and money laundering), has been established in the State Prosecutor's Office since July 2015. The Special State Prosecutor's Office, in the exercise of its jurisdiction, works directly with the Special Police Department. The new rulebook on the internal organization of the **Anti-Corruption Agency** was adopted in October 2018, providing for increased administrative capacity of the Department for Prevention of Conflict of Interest and Control of Political Party Financing. Montenegro **does not apply a specific corruption proofing mechanism**, although the secretariat for legislation issued legal and technical rules for drafting legislation. Montenegro also allows feedback from public consultations on draft laws.

The Government of Montenegro decided to set up for the period 2010-2014 a **Strategy for Fight against Organized Crime and Corruption** that was later followed by an **Action Plan** for its implementation. The National Strategy for Fight against Organized Crime and Corruption defines: a) strategic directions, principles and goals of fight against corruption and organized crime; b) priority measures in the frame of establishing efficient system of fight against corruption and organized crime in public, private and civil sector; c) role and responsibility of all actors which is the basis for efficient development of a sustainable system of monitoring and evaluation of the overall national response to threats posed by corruption. According to final report on the degree of the Action Plan realization, 59 per cent of measures was realized, 30 per cent of measures was realized only partially while 11 per cent of measures was not realized.

³⁰ Criminal Procedure Code, Official Gazette of the Republic of Montenegro no. 70/2003, no. 13/2004, no. 57/09, 49/10 and 35/15.

³¹ Law on State Prosecutor, Official Gazette of the Republic of Montenegro, no. 69/2003.

The start of **EU negotiation process** (Action Plans for Chapter 23 and 24) and anticorruption reforms resulted in adopting and amending most of the legislation related to fight organized crime and corruption. In December **2014**, the **Parliament** of Montenegro adopted a **comprehensive set of laws for prevention of corruption** (the Parliament also adopted an Ethical Codex for their members). Amongst them, the **Law on Prevention of Corruption**³² prescribes measures to prevent conflicts of public and private interest, regulates restrictions on the performance of public functions, submission of revenue reports and public officials' assets, protection of persons reporting threats to public interest indicating corruption, as well as other issues of relevance for preventing corruption. A crucial fact when it comes to The Law on Prevention of Corruption is that this Law foresees educated special institution for the prevention of corruption: **the Anti-Corruption Agency**. Such Agency shall issue a decision on the basis of which the public official is acting by an unauthorized public function, therefore entailing the existence of a violation or not. Additionally, the Agency takes numerous measures to prevent and fight corruption (e.g. determines the existence of a conflict of interest in public functions and undertakes measures for its prevention; controls restrictions in the exercise of public functions; issues a misdemeanor order and initiate misdemeanor and other proceedings; achieves regional and international cooperation in the preventive fight against corruption; and perform other tasks prescribed by law; performs other duties under its jurisdiction).

New laws and amendments significantly strengthened the legislation framework in this area. With the **amendments** to the **Law on Prevention of the Conflict of Interest**³³, the competent Parliament Commission became authorized for investigating inexplicably acquired wealth. The amendment affected the increase in the number of violation penalties and the amount of pecuniary penalties. However, it seems that the scope of the penalties is not sufficient to prevent all violations. According to new amendments the Parliament, Commission has access to information in possession of banks and other financial institutions but exclusively upon permission by the public official. The main novelties introduced by the new **Law on Lobbying**³⁴ include establishment of public registry of lobbyists and require public authorities to publish the contacts they have with lobbyists. The amendments to the **Law on Public Procurement**³⁵ are aimed at tightening the rules on prevention of the conflicts of interests and reducing the risk from corruption. Therefore, **the Inspection service** is made competent for the control of

³² Official Gazette of the Republic of Montenegro no. 53/2014 and 42/2017.

³³ Official Gazette of the Republic of Montenegro no. 1/2009, 41/2011 and 47/2011.

³⁴ Official Gazette of the Republic of Montenegro no. 52/2014.

³⁵ Official Gazette of the Republic of Montenegro, no. 40/2001, 42/2011, 57/2014 and 28/2015.

implementation of awarded contracts. The **Law on free access to information**³⁶ was amended in April 2017. Its implementation has not contributed to ensuring more transparency and accountability in public service, as the authorities continue declaring requested information as classified, excluding it from the scope of application of this law. In the next future, the current legal framework on **whistle-blower protection** will need to be aligned with the new EU *acquis* on this issue. It is also important to mention **The Code of Police Ethics** as a subordinate act that foresees the principles of ethics that a police officer must respect in the conduct of police affairs. What importance is attached to the Code of Ethics shows that the **Law on Internal Affairs**³⁷ foresees violating the Code as a major violation of official duty.

4.3. International cooperation

Montenegro acceded to the **UN Convention on Fight against Corruption** (UNCAC) in **2006**. The Convention does not provide the definition of corruption itself but it lists the series of different behaviors that the Convention member States have to criminalize and consider criminalizing (such as active and passive bribery of national State officials, active or passive bribery of foreign state officials, influence peddling, abuse of position and unjust enrichment). Moreover, the Convention explicitly requires and encourages Criminal profiling of corruption in domestic law in private sector (such as active or passive bribery in private sector, private sector property fraud, money laundering), which is particularly directed towards fight against corruption in business sector. The Parliament of Montenegro adopted a **Resolution on Fight against Corruption and Organized Crime**³⁸ expressing readiness to, inter alia, engage all its capacities to build national anticorruption legislation and to establish the closest possible international and regional cooperation in the area of corruption and organized crime prevention. Additional **multilateral** treaties regarding the corruption subject and binding Montenegro are: i) the **Additional Protocol to the Criminal Law Convention on Corruption**³⁹; ii) the **Civil Law Convention on Corruption**⁴⁰; iii) the **Criminal Law Convention on Corruption**⁴¹. By joining it in 2003, Montenegro has been a full member of **GRECO** (the Council of Europe's Group of States against Corruption) since June **2006**. The

³⁶ Official Gazette of the Republic of Montenegro no 44/2012.

³⁷ Official Gazette of the Republic of Montenegro no. 01/2015,

³⁸ Official Gazette of the Republic of Montenegro no. 2/2008.

³⁹ Official Gazette of the Republic of Montenegro no. 11/2007.

⁴⁰ Official Gazette of the Republic of Montenegro no. 1/2008.

⁴¹ Official Gazette of the Republic of Montenegro no, 18/2005.

country is also part of the **Regional Anti-Corruption Initiative** (RAI) in South-Eastern European countries.

As the Law on **International Legal Assistance in Criminal Matters** was amended in 2013⁴², Montenegro cooperates with **INTERPOL** and **EUROPOL** (an **Agreement on Operational and Strategic Cooperation** was signed with the latter in 2014). On 2nd February 2016, European Parliament adopted legislative resolution on the draft Council implementing decision approving the conclusion by Eurojust of the **Agreement on Cooperation** between **EUROJUST** and Montenegro.

Montenegro has shown to be always striving to **bilaterally** create the conditions for stronger, mandatory and more effective cooperation with the countries of the region in the **fight against all forms of crime, particularly organized crime and corruption**. Montenegro has concluded **agreements with Serbia (2011), Croatia (2011), Macedonia (2012) and Bosnia and Herzegovina (2013)**, which provide for the possibility of extradition of own citizens. Common to these agreements is that own citizens may be extradited only for criminal offences of organized crime, corruption and money laundering, for the purpose of conducting criminal proceedings for criminal offences punishable by imprisonment of 4 years or more, or for the execution of a sentence of imprisonment of at least two years for the above criminal offences. The specificity of the agreement with Serbia is that it additionally provides for the possibility of extradition of own citizens for criminal offences against humanity and other goods protected by international law, as well as for other serious criminal offences, or severe forms of the criminal offences for which a punishment of imprisonment of at least five years or more is prescribed.

5. North Macedonia

5.1. Criminal profiling of corruption in domestic law

In North Macedonia, the **Criminal Code** penalizes a wide range of corruption-related offences. For instance, bribery in the private sector is criminalized under Articles 357 (passive bribery) and 358 (active bribery) of the Criminal Code. In addition, the authorities indicated that, with respect to corruption in the **private sector**, other provisions of the Criminal Code apply, including Article 252 on abuse of trust, Article 253 on the unauthorized reception of gifts, Article 275 on securities and share fraud, Article 353 on abuse of position, etc. The **elements**

⁴² Official Gazette of the Republic of Montenegro no, 4/2008 and 36/2013.

described under bribery of domestic **public** officials **also apply** to bribery in the **private sector**. In this context, the authorities indicated that even though paragraph 4 of Article 358 of the Criminal Code only refers to the “giving or promising of a bribe”, it is understood that the ‘offering’ is also covered by direct remittance/reference to the basic comprehensive definition of the offence contained in paragraphs 1 and 2 of Article 358, which explicitly cover the ‘offering’. Moreover, the authorities highlighted that, in the national language, there is no conceptual difference between the terms offering and promising. In addition, a number of specific features apply to this offence. The applicable **sanctions** in respect of active and passive bribery of domestic public officials apply to the offences of bribery in the private sector therefore ranging, for instance, from three months to five years for active bribery.

5.2. Tools to prevent and fight the phenomenon

Meaningful tools were first introduced in **2002** through the adoption of the **Law on Prevention of Corruption**⁴³, which underwent some reviews between 2004 and 2008, as well as the **establishment** of the **State Commission for Prevention of Corruption (SCPC)**, an independent body, responsible for the implementation of measures on corruption prevention and conflicts of interest. The SCPC is authorized and obliged to prepare and adopt the **State Programme for Prevention and Repression of Corruption** and has the opportunity to cooperate with corresponding national bodies of other states and with international organizations. Accordingly, it has published a methodology/guidelines for assessing legislation corruption-wise. Even though this **does not make all draft laws subject to corruption proofing**, the State Commission for the Prevention of Corruption is competent to issue opinions on laws relevant ‘for corruption prevention’ and ‘for prevention of conflict of interests’ (Article 49 of the Law on Prevention of Corruption). Thus, state authorities drafting relevant laws are **obliged to submit** their drafts to the State Commission for review. In 2018, the government **improved the legal framework** for preventing corruption by adopting a new **Law on Prevention of Corruption and Conflict of Interests**⁴⁴. The new law increases the powers of the SCPC. The SCPC’s competences are now defined in the new law, the Law on Lobbying and the Law on the Protection of Whistle-blowers (LPCCOI). These include inter alia: a) adopting a national strategy for the prevention of corruption and conflicts of interest and related action plans; b) acting on cases of conflicts of interest as determined by law; c) registering and

⁴³ Official Gazette of the Republic of North Macedonia no. 28/2002; 46/2004; 126/2006; 10/2008; 161/2008 and 145/2010.

⁴⁴ Official Gazette of the Republic of North Macedonia no. 70/2007, 15/2009 and 12/2019.

monitoring the assets – including any changes – of functionaries; d) keeping a register of elected and appointed persons; e) preparing a catalogue of gifts under Art. 58; f) acting upon reports about suspicions of corruption and conflict of interest. The LPCCOI defines conflicts of interest as a conflict between ‘public authorizations and duties’ and an official’s private interest which has or could have an impact on the impartial performance of his/her ‘public authorizations and official duties’. It also clarifies and strengthens a set of key rules governing incompatibilities between certain public functions or restrictions on doing business while holding public functions. The law includes sanctions against institutions that fail to provide information. It facilitates the collection of information by establishing a single form for the declaration of assets and statement of interests **in line with the GRECO recommendations**. The forms are submitted electronically into the database to ease control and verification. **The Law on the Financing of Political Parties**⁴⁵ stipulates the manner and procedure for ensuring financial means and their management to political parties. Rules on the financing of pre-electoral campaigns are set out in the **Electoral Code**⁴⁶. Amendments to the Law on the Financing of Political Parties from the state budget amped up the proportion of funds to increase the financial independence of political parties. Each year the Ministry of the Interior’s Department for Internal Control, Criminal Investigation and Professional Standards (DICCIPS) adopts its Anti-Corruption Programme with a corresponding Action Plan.

The **Special Public Prosecutor** has a confirmed leading role in investigating and prosecuting high-level corruption cases, even though a newer **Law on the Public Prosecution Office**⁴⁷ to integrate the Special Public Prosecutor within the prosecutorial system has been set up. A new **State Commission for Prevention of Corruption** was appointed in February 2019. To **strengthen its capacity in fighting impunity and lack of integrity**, the Commission is vested with **additional powers**. It will be able to directly request information from numerous financial institutions – banking, traffic institutions – to facilitate the process of verification of the officials’ statements of interest and of assets. It will also be able to initiate misdemeanor procedures. The competence sharing with other competent institutions has been clarified and a long-overdue mechanism to support functional independence established. The main institutions dealing with law enforcement are the **Department for Serious and Organized**

⁴⁵ Official Gazette of the Republic of North Macedonia no. 76/2004, 86/2008, 161/2008, 96/2009, 148/2011

⁴⁶ Official Gazette of the Republic of North Macedonia no. 40/2006, 136/2008, 148/2008, 155/2008, 163/2008, 44/2011, 51/2011, 54/2011, 142/2012, 31/2013, 34/2013, 14/2014, 30/2014, 196/2015, 35/2016, 97/2016, 99/2016, 136/2016, 142/2016, 67/2017, 125/2017, 35/2018, 99/2018, 140/2018, 208/2018 and 27/2019.

⁴⁷ Official Gazette of the Republic of North Macedonia no. 80/1992, 19/1993, 9/1994, 9/1996, 38/2004, 150/07 and 24/2019.

Crime within the Ministry of the Interior and a specialized **Public Prosecutor's Office** for Prosecuting Organized Crime and Corruption within the Public Prosecutor's Office. Whenever the police refer an alleged event of corruption to the Public Prosecutor, he is entitled of leading the investigations, if it's the case. In addition, some investigative centers, to back up the Prosecutor's struggle, were established in Montenegro, as required by the Law on Criminal Procedure. The Public Prosecutor's Office must also demonstrate its capacity to act proactively in pursuing cases referred by the State Commission for Prevention of Corruption, the State Audit Office and other institutions.

The State Audit Office exercises **ex-post control** and the **State Commission for Prevention of Corruption's recently acquired powers** authorizing it to carry out inspections at any time, allowing the continuous monitoring of party financing. Amendments to the **Law on free access to public information**⁴⁸ were recently adopted in order to lay down the right to request information on public finances of political parties. The **Law on lobbying**⁴⁹ adopted in 2008 regulates lobbying activities, the registration of lobbyists and includes a supervision mechanism. There is still a need for introducing rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process. Amendments to the **Law on the Protection of Whistle-blowers**⁵⁰ and secondary legislation implement the recommendations of the Venice Commission but require further alignment with the new EU *acquis* on this issue.

5.3. International cooperation

In North Macedonia, important instruments in the upgrading of the legislative framework for the fight against corruption are represented by the ratification of two Council of Europe conventions: the **Criminal Law Convention against Corruption** (1999) and the **Civil Law Convention against Corruption** (2002). In **2007**, the former Yugoslav Republic of Macedonia also became party to the **United Nations Convention against Corruption (UNCAC)**. North Macedonia has been part of **GRECO** since 2000 and undergone five evaluation rounds on different topics related to the prevention and fight against corruption. The **Regional Anti-Corruption Initiative (RAI)** in South-Eastern European countries is currently active in the country.

⁴⁸ Official Gazette of the Republic of North Macedonia no.13/2006, 86/2008, 6/2010, 42/2014, 148/2015, 55/2016, 64/2018 and 98/2019.

⁴⁹ Official Gazette of the Republic of North Macedonia no. 106/2008.

⁵⁰ Official Gazette of the Republic of North Macedonia no.196/2015 and 35/2018.

Even though an **Operational and Strategic Agreement** was signed in **2010**, a representative from Macedonia is not present within **EUROJUST** – only a national contact point in Macedonia is existent – and a Macedonian desk is not yet established to deepen the cooperation with. Neither North Macedonia has yet assigned a contact point for the **European Judicial Network (EJN)**. The country belongs to the **IPA/2017 Project "Countering Serious Crime in the Western Balkans"** network. Cooperation with **EUROPOL** is well-established following the conclusion of a **strategic agreement** in **2007** and an **operational agreement** in **2011**. The Republic of Macedonia is also a member of the **Western Balkans prosecutorial network (WBPN)** since 2006. WBPN is an initiative supported by Gesellschaft für Internationale Zusammenarbeit (GIZ) and Center for international legal cooperation (CILC) through the IPA Regional Programme for countering and fighting serious organized crime and corruption in the Western Balkans (Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and Kosovo). The aim of the project is to raise the effectiveness of and cooperation among the Western Balkans region in tackling forms of serious organized crimes and in fighting against illegal migrant smuggling. The activities are focused on strengthening operational building of law enforcement and judicial agencies for cross border cooperation, investigation, information and data exchange, cooperation through utilizing the regional initiatives, prepare precondition for conclusion of cooperation agreements as well as building the skills and capacities of the law enforcement agencies and thus increasing their efficiency.

In 2009, North Macedonia did ratify a bilateral agreement on police cooperation with Kosovo; in 2013, with Montenegro and Croatia; whereas the same happened with Serbia only in 2014. In the spirit of strengthening of the regional cooperation and the development of the good neighboring relations, the Republic of Macedonia and the States in the region, in the newly concluded bilateral agreements, stipulate the possibility for extradition of their own nationals for criminal acts of organized crime, corruption and money laundering. The bilateral treaties for mutual legal assistance in criminal matters concluded with Serbia (2012), Croatia (2012), Montenegro (2012) and Bosnia and Hercegovina (2006) include concrete criminal acts for mutual legal assistance and also for extradition, among which are the criminal acts for organized crime and corruption. The criminal offences of this Convention are incorporated into the North Macedonia relevant legislation, which means that they are also included in these bilateral treaties. The other bilateral agreements include general provisions for extradition and do not stipulate concrete offences. The extraditions already executed were governed either by the **European Convention for Extradition** of the Council of Europe or by bilateral treaties. So far, there was no concrete need to use UNCAC as a base for extradition. The former Yugoslav Republic of Macedonia also reported that none of the UNCAC offences is considered to be a

political offence in case of extradition and that UNCAC could be directly applicable in the absence of any bilateral treaty in place.

6. Serbia

6.1. Criminal profiling of corruption in domestic law

There is no specific national anti-corruption legislation in Serbia. The **anti-corruption framework** is **scattered** between various legislation but it's safe to say that main legislative enactment is the **Criminal Code**⁵¹ recognizing both **passive and active bribery** (which applies both to private/commercial bribery and public bribery) and **trading in influence**. The **Criminal Code** defines criminal acts with the aim to curb the corruption which are classified, primarily, in the group of criminal acts against **official** duty: abuse of office (Article 359), influence peddling (Article 366), soliciting and accepting bribes (Article 367) and bribery (Article 368). Also, most criminal acts against the economy are important for curbing corruption. The Criminal Code incriminate performing all forms of influence peddling by a person holding the status of an official. Also the perpetrator of accepting bribes can be a foreign official, for instance when the bribe is given, promised or offered to a foreign official (Article 367, paragraph 5 and Article 368, paragraph 3). In terms of curbing corruption in the **private sector**, the **Law amending**⁵² the 2016 **Criminal Code**, introduces new incriminations within the criminal acts against economy which refer to the corruption in the private sector. The **elements** of the offence described under bribery of domestic **public officials also apply** to bribery in the **private sector** and the applicable sanctions in respect of active and passive bribery of domestic public officials apply to the offences of bribery in the private sector. The applicable sanctions in respect of active and passive bribery of domestic public officials apply to the offences of bribery in the private sector (active bribery implies imprisonment between six months and five years while passive between two years and twelve years). In addition to the Criminal Code, the criminal acts against the economy and other offenses with the element of corruption are incriminated by other laws: i) **Law on the Anti-Corruption Agency**⁵³; ii) **Law on the Tax Procedure and Tax Administration**⁵⁴; iii) **Law on Seizure/Confiscation of**

⁵¹ Official Gazette of Republic of Serbia no. 85/2005, 88/2005, 107/2005, 72/2009 and 111/2009.

⁵² Official Gazette of Republic of Serbia No. 94/2016.

⁵³ Official Gazette of the Republic of Serbia no. 97/2008 and 53/2010.

⁵⁴ Official Gazette of the Republic of Serbia no. 80/2002, 84/2002, 23/2003, 70/2003, 55/2004, 61/2005, and 85/2005.

Illegally Acquired Assets through Crime⁵⁵; iv) Law on Foreign Exchange Operations⁵⁶; v) Law on Banks and Other Financial Organizations⁵⁷.

6.2. Tools to prevent and fight the phenomenon

Serbia introduced some important **anti-corruption prevention instruments** by adopting the **Law on Organization and Competence of the State Authorities in the Suppression of Organized Crime⁵⁸** (2002), the **Law on Prevention of Conflict of Interests in performing Public Functions⁵⁹** (2004), the **Law on the Liability of Legal Entities for Criminal Offences⁶⁰** (2008). The **Law on civil servants** was **amended** in **2018** to include provisions concerning conflicts of interest in public administration and disciplinary procedures; however, the amendments did not sufficiently address shortcomings in transparent and merit-based recruitment. The new **Law on the organization and jurisdiction of government authorities in suppression of organized crime, terrorism and corruption**, which entered into force in March 2018, provides for specialized authorities to investigate and prosecute corruption cases. The legal and institutional oversight framework for financing of political parties has been substantially strengthened by the introduction of the **Law on Financing of Political Activities⁶¹** (LFPA) in 2011. The law prescribes strong reporting and transparency requirements for parties, lays out sanctions for violation of rules and places the Anti-Corruption Agency in charge of supervising party financing. The last **amendments** to the **Law on Civil Servants⁶²** (2014), which are a part of the reform process of the civil servant system based on merits, are focused on the strengthening and promoting the professionalism of civil servants and on the establishment of civil servant system based on the principles of transparency, competitiveness, and depoliticization. The amendment to the law which refer to the prevention of the conflict of interest have the aim to contribute to a better organization of this field in the civil servant system, better prevention of corruption and management of the conflict of interest, harmonization of legal solutions with the international standards in the field of prevention of

⁵⁵ Official Gazette of the Republic of Serbia no. 12/2010.

⁵⁶ Official Gazette of the Republic of Serbia no. 23/2002, 34/2002 and 101/2005.

⁵⁷ Official Gazette of the Republic of Serbia no. 107/2005.

⁵⁸ Official Gazette of the Republic of Serbia no. 42/2002, 27/2003, 39/2003, 67/2003, 29/2004, 58/2004, 45/2005, 61/2005 72/2009, 72/2011, 101/2011.

⁵⁹ Official Gazette of the Republic of Serbia no. 43/2004.

⁶⁰ Official Gazette of the Republic of Serbia" No. 97/2008.

⁶¹ Official Gazette of the Republic of Serbia, no. 43/2011.

⁶² Official Gazette of the Republic of Serbia no. 79/2005.

the conflict of interest, and the realization of objectives, measures and activities defined by strategic documents in the field of anti-corruption. It regulates in detail the prohibition of receiving gifts by government officials and with them related persons in terms that they must not receive a thing, present, service or any other benefit, which can affect the impartial and professional performance of office and which may be considered a reward related to the performance of that office. Also, it introduces the obligation of government officials to inform the government body about the present received. In the light of transparency related to the activities for preventing the conflict of interest the obligation is introduced for government authorities to publish reports on the management of the conflict of interest in the government authority containing the statistical data from the records on conflict of interest kept by the government authority.

The **revised Law on the Prevention of Corruption**⁶³ was adopted on 21 May 2019. The law is set to comply with the European *acquis*, international agreements and **GRECO recommendations**. The Anti-Corruption Agency, thanks to the abovementioned **Law on the Anti-Corruption Agency of 2008**, has the mandate to '*launch initiatives for amending and enacting regulations in the field of combating corruption*' and to '*co-operate with other state bodies in drafting regulations in the field of fight against corruption*' (Article 5 of the Law on the Anti-Corruption Agency). Bearing that in mind, the **Law on the Prevention of Corruption** introduces several new features as it, firstly, **expanded competencies of the Anti-Corruption Agency** to, for instance, the **control of bank accounts**: the Agency may at any time have an insight into the bank accounts of public officials, who, after assuming duty, must report their income and property, as well as the property of their spouses, children, parents, brothers and sisters. The Agency will need no consent to review the bank accounts of officials (this consent is needed for affiliated persons in case of existence of a reasonable doubt). The Law introduced **anonymous application** and the possibility of the Agency to act upon anonymous reports. Furthermore, the part of the Law dealing with the so-called functionary campaign prescribes that the official must separate his actions as a representative of the public authorities from the political campaign and that the state funds cannot be used in political campaigns.

Moreover, Serbia's **Anti-Corruption Strategy 2013-18**⁶⁴ underlines the '*obligation for all authorities proposing regulations to carry out an analysis of effects on corruption in the process of drafting a regulation on the basis of a methodology developed by the Agency*' (Article 4.1 of the Law on Anti-Corruption Agency). Consequently, all laws and bylaws are formally subject to

⁶³ Official Gazette of the Republic of Serbia no. 40/2019.

⁶⁴ Official Gazette of Rrepublic of Serbia no. 57/2013.

corruption proofing. The Anti-corruption Agency monitored the implementation of Serbia's **anti-corruption strategy and action plan for 2013-2018**. A number of steps to effectively implement and monitor this strategy and its follow-up strategy, as well as the relevant sections in the action plan for Chapter 23, have been seriously delayed.

6.3. International cooperation

In **2005**, Serbia became party to the **United Nations Convention against Corruption (UNCAC)**. The Convention does not define corruption *per se*, but lists a number of different behaviors that States party to UNCAC have to criminalize or consider criminalizing (e.g. active and passive bribery of national public officials, active and passive bribery of foreign public officials, embezzlement, trading in influence, abuse of functions and illicit enrichment). Furthermore, the Convention explicitly requires or encourages the Criminal profiling of corruption in domestic law in the private sector (e.g. active and passive bribery in the private sector, embezzlement of property in the private sector and laundering the proceeds of crime), which is specifically directed at fighting corruption in the business sector. Furthermore, Serbia **ratified the Criminal Law Convention against Corruption (2002) and the Civil Law Convention against Corruption (2008)**. Serbia joined the Group of States Against Corruption (**GRECO**) in **2003**. In the First, Second and Third Evaluation Rounds, GRECO has addressed altogether 40 recommendations to Serbia and almost all of them have been implemented. Also, Serbia is a Member State in the **Regional Anti-Corruption Initiative (RAI)**.

International legal assistance in Serbia is primarily defined within the **Law on International Legal Assistance in Criminal Matters** (Official Gazette of Serbia 20/2009). In addition to the law, above it, according to the Constitution of Serbia, one should note the overarching international treaties and bilateral treaties (e.g. the **European Convention on the Transfer of Proceeding in Criminal Matters**, the **European Convention on Extradition** and the three additional Protocols to it, the **European Convention on Mutual Assistance in Criminal Matters** and second additional Protocol). On 16 January **2004**, **EUROPOL** and Serbia signed an **Agreement on Operational and Strategic Cooperation. Amendments** to the Agreement on operational and strategic cooperation with Europol, which are necessary (Commission's 2019 report) due to the extension of EUROPOL's extended mandate to include criminal offences against EU financial interests, and financial market manipulations, are being prepared. Conversely, the process of signing an **operational type agreement** with **EUROJUST** was only initiated in December **2018** and negotiations are at an advanced stage.

Serbia ratified bilateral agreements on police cooperation with North Macedonia in 2014 and with Kosovo in 2016. The Republic of Serbia has concluded more agreements with four countries (Croatia, Montenegro, Bosnia and Herzegovina and Macedonia) which allow the extradition of its own nationals.

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