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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

ON

THE SPECIAL STATE PROSECUTOR'S OFFICE

OF MONTENEGRO

8 October 2014

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THE LAW ON SPECIAL STATE PROSECUTOR'S OFFICE

I. GENERAL PROVISIONS

Subject matter of the Law (Scope of the Law)

Article 1

This Law shall regulate organization and jurisdiction of the Special State Prosecutor's Office, requirements and procedure for appointment of the head of the Special State Prosecutor's Office (hereinafter: Chief Special Prosecutor) and state prosecutors in the Special State Prosecutor's Office (hereinafter: special prosecutor) and relationship with other state authorities and state administration authorities.

Seat

Article 2

Special State Prosecutor's Office shall be the state prosecutor's office established for the overall territory of Montenegro and with the seat in Podgorica.

Criminal prosecution

Article 3

The activities of criminal prosecution for the offenses under the jurisdiction of the Special State Prosecutor's Office, as well as other activities stipulated by the Law, shall be performed by the Chief Special Prosecutor and the Special Prosecutors.

High level corruption, under this Law, shall mean the criminal offences of the abuse of office, fraud at work, illicit influence, inciting illicit influence, active and passive bribery committed by public officials, as well as the criminal offences of the abuse of position in business undertakings and abuse of authority in economy resulting in obtaining of the pecuniary gain exceeding the amount of four thousand euros.

Relationship between laws

Article 4

Provisions of the Law on State Prosecutor's Office shall apply accordingly to all the issues that are not regulated by this law.

II. REQUIREMENTS FOR THE ELECTION OF THE CHIEF SPECIAL PROSECUTOR AND SPECIAL PROSECUTOR

Requirements for appointment of the Chief Special Prosecutor

Article 5

Chief Special Prosecutor shall be appointed from amongst the heads of the state prosecutor's office or state prosecutors with a permanent mandate, who meet the requirements for the supreme state prosecutor's appointment.

With the written consent thereof, the Chief Special Prosecutor shall be appointed by the Prosecutors' Council, at the proposal of the Supreme State Prosecutor.

The opinion of the assembly of state prosecutors from the Supreme State Prosecutor's Office shall be obtained prior to the submission of the proposal referred to in Paragraph 2 of this Article.

Requirements for appointment of the Special Prosecutor

Article 6

Special Prosecutor shall be appointed from amongst the heads of the state prosecutor's office or state prosecutors with minimum seven years of experience as prosecutors.

Prosecutors' Council shall appoint the Special Prosecutor, with the written consent thereof, at the proposal of the Chief Special Prosecutor.

The opinion of the Supreme State Prosecutor shall be obtained prior to the submission of the proposal referred to in Paragraph 2 of this Article.

Mandate

Article 7

Chief Special Prosecutor and Special Prosecutor shall be appointed for the period of five years.

Termination of duty and mandate

Article 8

If the head of the state prosecutor's office is appointed as Chief Special Prosecutor or Special Prosecutor, his/her duty as the head of that state prosecutor's office shall be terminated.

Following the end of mandate thereof, if the Chief Special Prosecutor fails to be reappointed as the Chief Special Prosecutor, he shall continue to perform the duty of the state prosecutor in the Supreme State Prosecutor's Office, which shall be confirmed by the decision of the Prosecutors' Council.

If the Chief Special Prosecutor or Special Prosecutor resigns prior to the expiry of the mandate for which he was appointed in the Special Prosecutor's Office, he shall continue to perform the duty of the state prosecutor in the state prosecutor's office where he worked prior to the appointment, and this shall be confirmed by the decision of the Prosecutors' Council.

Following the end of mandate thereof, if not reappointed, the Special Prosecutor shall continue to perform the duty in the state prosecutor's office in which he worked prior to the appointment.

If the Chief Special Prosecutor refuses to continue to discharge the duty of the state prosecutor in the Supreme State Prosecutor's Office in accordance with Paragraph 2 of this Article, the Prosecutors' Council shall adopt the decision on the termination of duty.

If the Special Prosecutor refuses to continue to discharge the duty in the state prosecutor's office in which he worked prior to appointment, in accordance with Paragraph 4 of this Article, the Prosecutors' Council shall adopt the decision on the termination of duty.

III. JURISDICTION AND ORGANIZATION OF THE SPECIAL STATE PROSECUTOR'S OFFICE

Jurisdiction

Article 9

Special State Prosecutor's Office shall officiate before the Special Department of the Higher Court in Podgorica.

Special State Prosecutor's Office shall prosecute the perpetrators of the following criminal offenses:

- 1) organized crime, irrespective of the potential punishment;
- 2) offenses with elements of corruption within the public sector, irrespective of the potential punishment, if the perpetrator is a public official in accordance with the law regulating conflict of interest prevention, as follows:
 - abuse of office,
 - fraud at work,
 - illicit influence,
 - inciting illicit influence,
 - passive bribery,
 - active bribery;
- 3) offences with elements of corruption within the private sector where the pecuniary gain exceeds the amount of four thousand euros, as follows:
 - abuse of position in business undertakings,
 - abuse of authority in economy, and
- 4) money laundering.

Authority **Article 10**

Chief Special Prosecutor and Special Prosecutor shall take actions that they were authorized for before the court of real and territorial authority or other state authority before which they officiate, in accordance with the law.

If, during the discharge of their duties, the head of the higher state prosecutor's office and the head of the basic state prosecutor's office learn that a criminal file may involve a criminal offense referred to in Article 9 of this Law, they shall immediately inform the Special State Prosecutor's Office that will take over the case if it believes that this is a case under its jurisdiction, or otherwise it will return the case to that prosecutor's office which may initiate the procedure to resolve the conflict of jurisdictions.

Management of the Special Prosecutor's Office **Article 11**

The Chief Special Prosecutor shall manage the work of the Special Prosecutor's Office and shall be responsible to the Supreme State Prosecutor for the work of the Special Prosecutor's Office.

The Supreme State Prosecutor's Office shall supervise the work of the Special State Prosecutor's Office in accordance with the law.

Organization **Article 12**

Special State Prosecutor's Office shall have departments and services within its structure. Departments shall be organized for the purpose of criminal prosecution, for financial investigations, for intelligence work and research, as well as international cooperation. Services may be established for the purpose of public relations, and execution of expert, administrative and technical tasks.

Departments **Article 13**

The Criminal Prosecution Department shall undertake preliminary investigation, investigation and act before the responsible court, and it shall also cooperate with other authorities.

Financial Investigations Department shall undertake preliminary investigations in order to establish the actual value of property benefits, to discover property obtained through a criminal offense, and it shall undertake measures to ensure seizure of property.

Intelligence and Research Department shall take care of the information system and use of data from the databases kept by other authorities, statistical reporting and monitoring of cases.

International Cooperation Department shall cooperate, in accordance with the international agreements, with the responsible authorities of the other states and international organizations, it shall appoint members of the joint investigative bodies established based on the international agreement for the purpose of investigation, criminal prosecution for criminal offenses under the jurisdiction of the Special State Prosecutor's Office.

Special prosecutors, advisors, professional assistants assigned based on the annual division of tasks, as well as police officers and officers from the administration authorities seconded to work in the Special Prosecutor's Office shall participate in the work of the Departments.

Public Relations Service

Article 14

Public Relations Service shall perform the tasks related to informing the public about the work of the Special State Prosecutor's Office in accordance with the Law.

Chief State Prosecutor shall adopt the decision on the establishment of services.

Seconding of State Prosecutors

Article 15

At the request of the Chief Special Prosecutor, the Prosecutors' Council may second a state prosecutor who meets the requirements from Article 6 of this Law, and who is proposed by the Chief Special Prosecutor, to the Special State Prosecutor's Office for a limited period of time in order to perform urgent tasks.

Seconding of prosecutors referred to in Paragraph 1 of this Article, for a limited time of maximum two years, shall take place with the written consent of the seconded person.

At the request of the Chief Special Prosecutor, the Prosecutors' Council may second a state prosecutor to the Special State Prosecutor's Office for a limited period of time in order to officiate in a specific case.

Seconding of prosecutors to the Special State Prosecutor's Office referred to in Paragraph 1 of this Article shall last for maximum one year and it may be extended under the same conditions.

During the work in the Special State Prosecutor's Office, the seconded state prosecutor referred to in Para. 1 and 3 of this Article shall have the right to salary in the same amount as the salary of the special prosecutor.

The Special State Prosecutor's Office shall pay for salary and cost of accommodation, i.e. travel, caused by seconding the prosecutor to the Special State Prosecutor's Office.

IV. RELATIONSHIP BETWEEN THE SPECIAL STATE PROSECUTOR'S OFFICE AND THE POLICE ADMINISTRATION

Police Department

Article 16

Police activities related to the criminal offenses referred to in Article 9 of this Law shall be performed by the police officers who work in the special organizational unit of the Police Directorate for work with the Special State Prosecutor's Office.

Responsibility of the Police Officer

Article 17

If the police officer fails to act as instructed by the special prosecutor in the case assigned to him, the Chief Special Prosecutor shall submit a motion to initiate disciplinary proceedings against him, in accordance with the law regulating internal affairs.

Chief Special Prosecutor shall be informed about the decision based on the motion referred to in Paragraph 1 of this Article.

V. RELATIONSHIP WITH OTHER STATE AUTHORITIES, PUBLIC ADMINISTRATION AUTHORITIES AND COMPANIES

Special investigative team

Article 18

Special Investigative Team is formed in the Special Prosecutor's Office for the purpose of investigating particularly complex cases and providing expert assistance.

Chief Special Prosecutor may request the heads of the Police Administration, Tax Administration, Customs Administration, Administration for the prevention of money laundering and financing of terrorism and Real Estate Administration and other public administration authorities to second a person employed in that authority to work in the Special investigative team.

Head of the authority shall decide on seconding the person to the Special State Prosecutor's Office on the reasoned request of the Special State Prosecutor.

Special Investigative Team shall act at the order and instructions from the Chief Special Prosecutor or special prosecutor appointed by the Chief Special Prosecutor.

If the seconded person fails to act based on the order and instruction of the Chief Special

Prosecutor or special prosecutor, the Chief Special Prosecutor shall ask for the disciplinary proceeding in accordance with the law regulating accountability of civil servants.

Members of the Special Investigative Team shall keep all data from the work of the Special Investigative Team confidential, as well as other data stipulated as confidential by the law or other regulation.

Special agreement between the Special State Prosecutor's Office and the authorities seconding persons to work in the Special State Prosecutor's Office shall regulate the issue of all costs related to the work of the Special Investigative Team.

Investigative Team in a Concrete Case

Article 19

Chief Special Prosecutor may establish an investigative team to act in a particularly complex case and besides the special prosecutor, such team may be comprised of police officers, employees of the Administration for the prevention of money laundering and financing of terrorism, inspectors from the Tax Administration and inspectors from the Customs Administration and employees of other responsible authority or organization, until the indictment becomes legally effective.

Head of the Investigative Team shall be the special prosecutor and members of the team referred to in Paragraph 1 of this Article shall act based on his order and under his supervision.

Heads of authorities or organizations that employ persons requested by the Chief Special Prosecutor to be seconded to the team shall decide on the seconding.

Relationship with the public administration authorities

Article 20

If the special prosecutor, during the discharge of duties within his responsibility, finds it necessary, he may request the public administration authorities responsible for taxes, customs and prevention of money laundering, as well as other state authorities, to control the operations of a legal or physical entity, to obtain certain documentation, data and to take other actions within their responsibility in accordance with the regulations that stipulate their responsibilities and powers.

Failing to act upon the request referred to in Paragraph 1 of this Article or failure to execute the request within the requested deadline, without a justified reason, shall represent a serious violation of duty.

Duty to submit data

Article 21

If, during the discharge of duties within the jurisdiction thereof, the public administration authority responsible for prevention of money laundering and terrorism financing learns that there exists suspicion that money, revenues or property were obtained through a criminal offense referred to in Article 9 of this Law, it shall request from the persons responsible for implementation of the measure of money laundering and terrorism financing prevention all data regarding transactions and parties held by these persons and to submit that data to the Special Prosecutor's Office within the period of three days.

Obligations of the banks

Article 22

If there are grounds to suspect that a person has or had revenues in the accounts thereof that were obtained through criminal offenses referred to in Article 9 of this Law, and if such revenues are important for the preliminary investigation and investigation or are subject to temporary seizure, special prosecutor shall request the bank to provide data about those accounts and the account balance.

The bank shall provide the requested data contained in the special prosecutor's request within the deadline stipulated by the special prosecutor.

Special Prosecutor may request the bank to temporarily suspend withdrawal of the suspicious money from the account of a particular person for maximum one year.

The request referred to in Paragraphs 1 and 3 of this Article shall contain a legal qualification of the criminal offense, brief description of facts and data regarding physical or legal entity that the request refers to, and a more detailed description of the measure or action requested.

Binding character of decisions of the investigative judge for banks

Article 23

At the request of the special prosecutor, the investigative judge may issue a decision obliging the bank to monitor payment operations in the account of a particular person, and during the period in which payment operations are monitored to regularly report to the special prosecutor about transactions in the monitored account.

In case of failure to execute the decision of the investigative judge, responsible person in the bank may be punished by the investigative judge with a fine of up to EUR 5,000 and the bank with the fine of up to EUR 50,000.

If, following the pronouncement of the fine referred to in Paragraph 3 of this Article, the bank fails to execute the decision, the investigative judge may imprison the person until the decision is executed, but for a maximum period of 2 months.

Decisions referred to in Paragraphs 1, 2 and 3 of this Article shall be subject to appeal. The appeal referred to in Paragraph 4 of this Article shall be decided upon by a panel of a responsible court from Article 24, Paragraph 7 of the Criminal Procedure Code. The appeal against the imprisonment decision shall not delay the execution of the decision.

If so necessary for the purpose of providing international legal assistance, at the request of the special prosecutor, the investigative judge shall issue an order to the bank to submit data about bank accounts held by the accused in another country.

Intelligence data

Article 24

The Police Administration shall organize collection, keeping and processing of all information relevant for the initiation and implementation of the criminal proceedings for the criminal offenses referred to in Article 9 of this Law.

Data from the records referred to in Paragraph 1 of this Article shall be submitted at the request of the Special State Prosecutor's Office via a protected information network/ secure communication channel.

Data referred to in Paragraph 1 of this Article shall not be accessible to the persons they refer to until the issuance of the order to initiate investigation or the issuance of the direct indictment or information.

VI. EMPLOYEES IN THE SPECIAL STATE PROSECUTOR'S OFFICE

Employees

Article 25

Special State Prosecutor's Office shall have a necessary number of advisors, other officers and employees, which is established in the act on internal organization and systematization. In the employment procedure, advisors, officers and employees shall be subject to special security checks in accordance with the Law on the protection of confidential data and give a statement of consent for such checks.

Employees referred to in Paragraph 1 of this Article shall submit a property statement within 30 days from the date of employment in the Special State Prosecutor's Office, and each calendar year no later than 1 March of the current year for the preceding calendar year. Statement of property of the employee and the property of the spouse, i.e. extramarital partner and children shall be submitted to the Chief Special Prosecutor.

Advisor

Article 26

An advisor shall be a person who graduated from the Faculty of Law (university education equal to 240 CSPK credits, qualification level VII-1), passed the juridical exam and has minimum five years of work experience.

Advisors assist the special prosecutor in his work, prepare draft acts, take minutes of the reports, complaints and statements of the citizens, perform independently or under supervision and based on instructions from the special prosecutor other professional tasks stipulated by the law and regulations adopted on the basis of the law.

Based on the authorization from the special prosecutor, advisors may engage in particular evidence-gathering actions.

Minutes regarding the entrusted action shall be signed by the special prosecutor within 48 hours from the moment of implementation thereof.

Professional assistants

Article 27

Special State Prosecutor's Office may have officers with university education equal to 240 CSPK credits, qualification level VII-1 in economics-finance or other relevant profession and with minimum five years of work experience covering relevant posts in those specific fields. As professional assistants, officers referred to in paragraph 1 of this Article assist the special prosecutor in the work on cases that require special expertise.

VII. DATA SECURITY

Manner of processing cases

Article 28

Acts, documents and minutes regarding investigative actions taken during the preliminary investigation, i.e. preliminary procedure for criminal offenses under the jurisdiction of the Special State Prosecutor's Office shall carry a secrecy sign in accordance with the law which regulates data secrecy.

Duty to protect confidential data

Article 29

Chief Special Prosecutor, special prosecutors, officers and employees in the Special State Prosecutor's Office shall protect secret data, irrespective of the manner in which they learned about them, in accordance with the law regulating data secrecy.

Persons seconded to work in the Special State Prosecutor's Office and the police officers referred to in Article 16 of this Law shall protect secret data, irrespective of the manner in which they learned about them, in accordance with the law regulating data secrecy.

Accessibility of data regarding the proceedings

Article 30

Persons referred to in Article 29 of this Law shall not make accessible to the public particular facts, data or contents of acts in cases that are subject to preliminary investigation and investigation.

The public shall only receive statements from the authorized public relations officer regarding official actions taken if that does not affect the proceedings.

Data protection

Article 31

Persons referred to in Article 29 of this Law shall not reveal data regarding personal, family and property related circumstances of physical persons, i.e. property related circumstances of legal entities that they learned about during the proceedings.

The duty to protect data referred to in Paragraph 1 of this Article and Article 30 of this Law shall remain after the end of work engagement in the Special State Prosecutor's Office.

VIII. FINANCING OF WORK AND IT SYSTEM OF THE STATE PROSECUTOR'S OFFICE

Assets for work

Article 32

Financial assets for work shall be secured within the budgetary allocation for the State Prosecutor's Office.

IT System

Article 33

Special State Prosecutor's Office shall have an IT system.

Special State Prosecutor's Office shall have access to data kept in databases of the IT systems of relevant state authorities and public administration authorities for the performance of tasks within the jurisdiction thereof, on the basis of special agreements.

IX. PUNITIVE PROVISION

Misdemeanor offense

Article 35

A legal entity shall be punished with a fine ranging from EUR 2,000 to EUR 20,000 in the following cases:

- 1) if it fails to submit requested data regarding bank accounts and the account balance within the specified deadline at the request of the special prosecutor (Article 22, Paragraphs 1 and 2);
- 2) if it fails to temporarily suspend withdrawals of suspicious money from the account of a particular person for maximum one year at the request of the special prosecutor (Article 22, Paragraph 3).

Responsible person in the legal entity and physical person shall also be punished for the misdemeanor offense referred to in Paragraph 1 of this Article with the fine ranging from EUR 500 to EUR 2,000.

X. TRANSITIONAL AND FINAL PROVISIONS

Article 36

This Law shall come into effect on the eighth day from the date of being published in the Official Journal of Montenegro.

JUSTIFICATION

I. CONSTITUTIONAL BASIS FOR THE ADOPTION OF THE LAW

Constitutional basis for the adoption of the Law on Special State Prosecutor's Office of Montenegro represents Article 16, Paragraph 1, Item 3 of the Constitution of Montenegro that stipulates that the law shall regulate, in accordance with the Constitution, the manner of establishment, organization and jurisdiction of the public authorities and procedure before these authorities, if so necessary for the operations thereof.

II. REASONS FOR ADOPTION OF THE LAW

Within the overall democratic processes in Montenegro, involving changes in the political, economic and legislative system, fight against corruption and organized crime represents an important element. In the previous period, Montenegro made significant progress in the harmonization of national legislation in the area of fight against corruption and organized crime, primarily through the introduction of international standards and mechanisms into the Criminal Code and Criminal Procedure Code.

In accordance with the goals of reform defined in the Strategy of Reform of Judiciary 2014-2018, within the goal aimed at improving efficiency of the judiciary, the drafting of the Law on Special State Prosecutor's Office was initiated, with the aim to create legal basis for the establishment of the Special State Prosecutor's Office as a separate state prosecutor's office for the fight against organized crime and corruption.

Besides, in accordance with the New Approach of the European Commission, Montenegro opened the accession negotiations with chapters 23 and 24, related to judiciary and fundamental rights, and justice, freedom and security. During the screening process, it was noted that there are reasons to specialize further the authorities responsible for the fight against corruption and organized crime.

Thus, the need to adopt the Law on Special State Prosecutor's Office was defined in the Action Plan for Chapter 23 and the Action Plan for Chapter 24, as the most important strategic documents in the area of fight against corruption and organized crime, which define concrete objectives and measures to be implemented in the EU accession process. In these action plans, one of the measures aimed at establishing independent, effective and specialized authorities for the fight against corruption and organized crime is the adoption of the Law on Special State Prosecutor's Office and establishment of the Special State Prosecutor's Office (AP 23, measure 2.2.1.4 and AP 24 measure 6,2,8).

On the basis of the aforementioned, it can be concluded that there are several reasons for which it is necessary to draft the Law on Special State Prosecutor's Office, and with its adoption Montenegro will meet the obligations from the international conventions and respond to the need to rationalize the judicial network, which requires implementation of effective measures in the area of organized crime and corruption.

III. HARMONIZATION WITH THE EUROPEAN LEGISLATION AND CONFIRMED INTERNATIONAL CONVENTIONS

In accordance with the international standards contained in the Council of Europe and United Nations documents, there are numerous solutions proposed in the draft Law on Special State Prosecutor's Office.

The most important international standards of the Council of Europe which were taken into consideration are as follows:

- European Convention on Human Rights and Fundamental Freedoms;
- Council of Europe Convention on Action against Trafficking in Human Beings from 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 which were taken into consideration are as follows:

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

EU standards are contained in the founding treaties, EU Charter on human rights and freedoms and the acquis. However, it should be emphasized that there is no secondary legislation that regulates in more detail the principles for organization of national legislation of the EU member states, which is understandable, having in mind the principles that the European Union is based upon and the manner in which it operates. Thus, it can be said that, with regard to independence and organization of judicial systems, the EU member states rely upon international standards developed within the Council of Europe and the United Nations.

The expert mission, supported through the Taiex Program, was particularly useful for harmonization of the text of the draft Law on Special State Prosecutor's Office with the international standards.

IV. EXPLANATION OF THE BASIC LEGAL INSTITUTES

PART I. GENERAL PROVISIONS (Articles 1-4)

General provisions of this Law stipulate, inter alia, that the subject matter of this law is organization and jurisdiction of the Special State Prosecutor's Office, requirements and procedure for appointment of the head of the Special State Prosecutor's Office - Chief Special Prosecutor, and state prosecutors in the Special State Prosecutor's Office - special prosecutors and relationship with other state authorities and state administration authorities. Special State Prosecutor's Office is the state prosecutor's office established for the overall territory of Montenegro and with the seat in Podgorica. Provisions of the Law on State Prosecutor's Office apply accordingly to all the issues that are not regulated by this law.

PART II. REQUIREMENTS FOR THE ELECTION OF THE CHIEF SPECIAL PROSECUTOR AND SPECIAL PROSECUTOR (Art. 5-8)

Chief Special Prosecutor is appointed from the ranks of the heads of the state prosecutor's office or state prosecutors with a permanent mandate, who meet the requirements for the supreme state prosecutor's appointment. With his written consent, the Chief Special

Prosecutor is appointed by the Prosecutors' Council, at the proposal of the Supreme State Prosecutor.

Special Prosecutor is appointed from amongst the heads of the state prosecutor's office or state prosecutors with minimum seven years of experience as prosecutors. Prosecutors' Council appoints the Special Prosecutor, with his written consent, at the proposal of the Chief Special Prosecutor.

If the head of the state prosecutor's office is appointed as Chief Special Prosecutor of Special Prosecutor, his/her duty as the head of that state prosecutor's office is terminated. Following the end of his mandate, if the Chief Special Prosecutor is not reappointed as the Chief Special Prosecutor, he will continue to perform the duty of the state prosecutor in the Supreme State Prosecutor's Office, and this will be confirmed by the decision of the Prosecutors' Council. If the Chief Special Prosecutor or Special Prosecutor resigns prior to the expiry of the mandate for which he was appointed in the Special Prosecutor's Office, he will continue to perform the duty of the state prosecutor in the state prosecutor's office where he worked prior to the appointment, and this will be confirmed by the decision of the Prosecutors' Council. Following the end of his mandate, if not reappointed, the Special Prosecutor will continue to perform the duty in the state prosecutor's office in which he worked prior to the appointment.

PART III. JURISDICTION AND ORGANIZATION OF THE SPECIAL STATE PROSECUTOR'S OFFICE (Art. 9-15)

Special State Prosecutor's Office officiates before the Special Department of the Higher Court in Podgorica. The draft Law defines a catalogue of criminal offenses that the Special State Prosecutor's Office is responsible for and those are criminal offenses involving organized crime, irrespective of the potential punishment; offenses with elements of corruption, irrespective of the potential punishment; money laundering, and trafficking in human beings.

The Chief Special Prosecutor manages the work of the Special Prosecutor's Office and he is responsible to the Supreme State Prosecutor for the work of the Special Prosecutor's Office. The Supreme State Prosecutor's Office supervises the work of the Special State Prosecutor's Office in accordance with the law. Special State Prosecutor's Office has departments and services within its structure. Departments are organized for the purpose of criminal prosecution, for financial investigations, for intelligence work and research, as well as international cooperation. Services may be established for the purpose of public relations, and execution of expert, administrative and technical tasks.

At the request of the Chief Special Prosecutor, the Prosecutors' Council may second a state prosecutor who is proposed by the Chief Special Prosecutor, to the Special State Prosecutor's Office for a limited period of time in order to perform urgent tasks, with the written consent of the seconded person. Besides, at the request of the Chief Special Prosecutor, the Supreme State Prosecutor may second a state prosecutor to the Special State Prosecutor's Office for a limited period of time in order to officiate in a specific case.

PART IV. RELATIONSHIP BETWEEN THE SPECIAL STATE PROSECUTOR'S OFFICE AND THE POLICE ADMINISTRATION (Art. 16-17)

Police activities related to the criminal offenses under the jurisdiction of the Special State Prosecutor's Office are performed by the police officers who work in the special organizational unit of the Police Directorate for work with the Special State Prosecutor's Office. If the police officer fails to act as instructed by the special prosecutor in the case

assigned to him, the Chief Special Prosecutor submits a proposal to initiate disciplinary proceedings against him, in accordance with the law regulating internal affairs.

**PART V. RELATIONSHIP WITH OTHER STATE AUTHORITIES,
PUBLIC ADMINISTRATION AUTHORITIES AND COMPANIES (Art. 18-25)**

Chief Special Prosecutor may request the state administration authority to second a person employed in that authority to work in the Special Prosecutor's Office for a limited period of time, in order to provide professional assistance.

Head of the authority shall decide on seconding the person to the Special State Prosecutor's Office, referred to in Paragraph 1 of this Article. Seconding of an employee to the Special State Prosecutor's Office lasts for maximum one year. If the seconded person fails to act based on the instruction of the special prosecutor, the Chief Special Prosecutor shall ask for the adoption of the decision on sending the employee back to the original authority. At the instruction of the Special Prosecutor, persons seconded to the Special State Prosecutor's Office take action in accordance with their job description and powers in the authority that seconded them.

For the purpose of investigating particularly complex cases in the jurisdiction of the Special Prosecutor's Office, the heads of the Police Administration, Tax Administration, Customs Administration, Administration for the prevention of money laundering and financing of terrorism and Real Estate Administration second one person each to work in the Special Prosecutor's Office for up to three years. Based on the decision of the Chief Special Prosecutor, representatives of other authorities may join the Special Investigative Team. Special Investigative Team acts at the order and based on the instructions from the Chief Special Prosecutor or special prosecutor appointed by the Chief Special Prosecutor.

Chief Special Prosecutor may establish an investigative team to act in a particularly complex case and besides the special prosecutor, such team may be comprised of police officers, employees of the Administration for the prevention of money laundering and financing of terrorism, inspectors from the Tax Administration and inspectors from the Customs Administration and employees of other responsible authority or organization, until the indictment becomes legally effective.

Furthermore, the draft Law stipulates the obligation of the banks to provide data on the accounts and account balance, at the request of the Special Prosecutor, and in case that there are grounds to suspect that a person has or had revenues in his accounts that were obtained through criminal offenses that fall within the jurisdiction of the Special State Prosecutor's Office, and if such revenues are important for the preliminary investigation and investigation or are subject to temporary seizure.

PART VI. EMPLOYEES IN THE SPECIAL STATE PROSECUTOR'S OFFICE (Art. 26-28)

Special State Prosecutor's Office has a necessary number of advisors, other officers and employees, which is established in the act on internal organization and systematization. In the employment procedure, advisors, officers and employees are subject to special security checks in accordance with the Law on the protection of confidential data and give a statement of consent for such checks. Employees are obliged to submit a property statement within 30 days from the date of employment in the Special State Prosecutor's Office, and each calendar year no later than 1 March of the current year for the preceding calendar year.

An advisor can be a person who graduated from the Faculty of Law (university education equal to 240 CSPK credits, qualification level VII-1), passed the juridical exam and has minimum five years of work experience. Advisors assist the special prosecutor in his work,

prepare draft acts, take minutes of the reports, complaints and statements of the citizens, perform independently or under supervision and based on instructions from the special prosecutor other professional tasks stipulated by the law and regulations adopted on the basis of the law. Based on the authorization from the special prosecutor, advisors may engage in particular evidence-gathering actions.

Special State Prosecutor's Office may have expert assistants with university education equal to 240 CSPK credits, qualification level VII-1 in economics-finance or other relevant profession and with minimum five years of work experience covering relevant posts in those specific fields. Professional assistants assist the special prosecutor in the work on cases that require special expertise.

PART VII. DATA SECRECY (Art. 29-32)

Acts, documents and minutes regarding investigative actions taken during the preliminary investigation, i.e. preliminary procedure for criminal offenses under the jurisdiction of the Special State Prosecutor's Office carry a secrecy sign in accordance with the provisions of a special law. Chief Special Prosecutor may, for justified reasons, decide to especially protect a particular case, and only the special prosecutor assigned by him may be informed about the contents of such a case. Officers in the Special State Prosecutor's Office may be informed about such a case only to the extent necessary for the performance of their duties, of which special official records are kept. For the purpose of protecting secrecy, Chief Special Prosecutor may decide to keep such a case in the entry books and other records under a special code during the preliminary investigation, i.e. preliminary procedure stage.

Chief Special Prosecutor, special prosecutors, officers and employees in the Special State Prosecutor's Office must protect secret data, irrespective of the manner in which they learned about them, in accordance with the law regulating data secrecy. Persons seconded to work in the Special State Prosecutor's Office must protect secret data, irrespective of the manner in which they learned about them, in accordance with the law regulating data secrecy. If so necessary in the interest of the proceedings, special prosecutor may issue a written order to the police officer or officer of some other state authority not to reveal data regarding work on the case without his authorization.

PART VIII. FINANCING OF WORK AND IT SYSTEM OF THE STATE PROSECUTOR'S OFFICE (Art. 33-35)

Financial assets for work of the Special State Prosecutor's Office are secured within the budgetary allocation for the State Prosecutor's Office. Having in mind the nature of cases they prosecute, the draft Law stipulates that the Chief Special Prosecutor, special prosecutor and other employees in the Special State Prosecutor's Office have the right to a special addendum in the amount of one average wage in Montenegro, and that the Chief Special Prosecutor and special prosecutor have an accelerated pension insurance plan, in the sense that each 12 months actually spent at work are calculated as 18 months of insurance.

The draft Law stipulates that the Special State Prosecutor's Office has a separate IT system, and access to data kept in databases of the IT systems of other state authorities and state administration authorities for the performance of tasks within their jurisdiction will be ensured on the basis of special agreements.

PART IX. PUNITIVE PROVISION (Art. 36)

The draft Law stipulates that the legal entity will be punished with a fine ranging from EUR 2,000 to EUR 20,000 if it fails to submit requested data regarding bank accounts and the account balance within the specified deadline at the request of the special prosecutor; and if

it fails to temporarily suspend withdrawals of suspicious money from the account of a particular person for maximum six months at the request of the special prosecutor. Responsible person in the legal entity and physical person will also be punished for this misdemeanor offense with the fine ranging from EUR 500 to EUR 2,000.

PART X. TRANSITIONAL AND FINAL PROVISIONS (Art. 37)

The transitional and final provisions of the draft Law on Special State Prosecutor's Office stipulate that this Law will come into effect on the eighth day from the date of being published in the Official Journal of Montenegro.

V. ASSESSMENT OF FINANCIAL ASSETS FOR THE IMPLEMENTATION OF THIS LAW

Coming into effect of this Law will create additional costs for which it is necessary to ensure additional funds in the Budget of Montenegro.

During the process of drafting the Proposal of the Law on Special State Prosecutor's Office, an analysis will be implemented in order to assess the cost of establishment of the Special State Prosecutor's Office.