Warsaw, 10 June 2026
Opinion-Nr: POLIT-MNE/581/2026 [NS]

URGENT OPINION ON THE NEW LAW OF MONTENEGRO ON FINANCING OF POLITICAL ENTITIES AND ELECTION CAMPAIGNS OF JULY 2025

MONTENEGRO

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

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Overall, the new Law of Montenegro on the Financing of Political Entities and Election Campaigns (the "Law") adopted in July 2025 provides a comprehensive framework for the regulation of political party and campaign financing and addresses a number of recommendations contained in ODIHR's 2024 Final Opinion on the previous version of the Law.

In particular, despite the continued predominance of mandate-based allocation criteria, the revised Law seeks to offer more balanced opportunities for accessing public funding for the regular and election campaign activities of political entities by increasing the proportion of public funds to be distributed equally among eligible political entities and reducing the share distributed proportionally to the seats won, while also increasing the pre-election allocation to 30 per cent, instead of 20 per cent previously. At the same time, the continued predominance of mandate-based allocation criteria, together with the unchanged timing of the initial disbursement of funds and the absence of limits on transfers from nominating political parties to campaign accounts, may continue to favour larger and incumbent political parties with established parliamentary representation. While the revised allocation formula constitutes a positive step towards a more equitable distribution of public resources, smaller and newly established parties may still face difficulties competing on an equal footing.

Another positive development is the introduction of provisions regulating third-party campaigning during elections, which addresses a significant gap previously identified in the legal framework and may contribute to greater transparency and accountability in electoral financing. At the same time, among other gaps, the Law does not expressly apply to third parties the same restrictions concerning permissible and prohibited sources of funding that apply to political entities, creating a risk that donation restrictions could be circumvented through third-party actors, including potentially through funding originating from foreign or otherwise prohibited sources.

A number of other provisions of the new Law also reflect positive developments and fully or partially address several recommendations made by ODIHR in its 2024 Final Opinion and recommendation from ODIHR election observation missions, notably by providing for enhanced transparency of private funding, including with respect to transfer methods, non-financial contributions and certain aspects of loans, strengthened transparency and reporting requirements concerning election campaign expenditures, including online and social media advertising and some expansion of the powers of the Agency for Prevention of Corruption and other.

Notwithstanding these positive developments, a number of ODIHR recommendations from the previous Final Opinion remain outstanding. In particular, further efforts are needed to close potential loopholes that could enable circumvention of political finance regulations, including in relation to loans, the lack of strong oversight and accountability mechanism with respect to the financing of a women's organization, and ineffective or incomplete sanctioning mechanisms. The Law would also benefit from improved legal clarity and consistency, including through the harmonized use of terminology and the elimination of inconsistencies between different provisions of the Law and related legislation, in particular the legislation governing political parties and elections.

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

A. To establish a threshold based on number of votes received for access to public funding for political parties' regular activities that is lower than the electoral threshold required to obtain seats in parliament or municipal assemblies, to ensure that non-parliamentary parties also become eligible; [para. 17]

B. Regarding pubic funding of election campaigns:

   1. to take into account the number of votes - lower than the electoral threshold - rather than the number of mandates obtained in parliament or municipal assemblies for the allocation of public funding for electoral campaigns; [para. 22]
   2. to review and consider decreasing the campaign expenditure limits and the amount of public funding allocated for election campaigns; [para. 23]

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

   1. to clearly specify in the Law the types of activities that may be supported by public funds specifically allocated for financing parties' women's organizations to enhance full and free participation of women in political and public life on an equal basis with men; [para. 26]
   2. to strengthen the monitoring and oversight of spending of public funds dedicated to parties' women's organizations, while applying proportionate sanctions in case of non-compliance, including for failure to report on eligible expenditures and ineligible expenditure, while ensuring that the sanction mechanism does not adversely affect the functioning or financing of parties' women's organizations; [para. 27]
   3. to consider introducing public funding mechanisms to support the political participation of other underrepresented persons or groups, including young people, persons with disabilities, minorities within parties; [para. 30]

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

   1. to introduce an automatic annual indexation mechanism for donation limits, tied to objective economic indicators, such as a minimum salary value, instead of absolute amounts; [para. 33]
   2. to treat party membership fees as donations to avoid the risk of membership fees being used as a way of bypassing donation limits; [para. 34]
   3. to specify that unserviced loans and those left unpaid by the time of the final campaign finance report should be considered as donations and require that financial reports include comprehensive listing of loans, including detailed terms and conditions, and consider limiting the overall level of bank loans and credits that a party may obtain annually, potentially linking the overall amount of the loans to the percentage of total funding otherwise received; [para. 43]
   4. to apply the same donation limits to the nominating party contributing to the election campaigns as the one applicable to contributions from legal entities or

companies for financing of the election campaign, i.e., EUR 20,000, while also regulating the use of own resources by candidates and related donation limits; [para. 45]

5. to expressly provide that the same rules governing permissible and prohibited donors applicable to political entities also apply to third parties engaged in election campaigning, while also introducing a requirement for third parties to designate a responsible person for compliance and communication and co-ordination with the Agency; [para. 49]

E. Regarding banned sources on funding:

To clarify in the Law that the prohibition to receive material and financial assistance from foreign states and other foreign sources applicable to political entities under Article 33 (1) shall apply equally to all election candidates, including presidential candidates and candidates in parliamentary and local elections; [para. 54]

F. Regarding reporting requirements:

1. to require political entities to open designated campaign bank accounts for the election campaigns immediately upon the calling of elections and no later than the day following the confirmation of the electoral list; [para. 53]

2. to provide greater details and clear rules on what must be reported annually, including donations received, income generated, loans and outstanding debts, assets and liabilities, and all categories of expenditure, as well as additional reporting requirements concerning sex-disaggregated data on party leadership, membership, candidacies, or other indicators relevant to assessing the participation of women in political life; [para. 58]

3. to strengthen the audit framework further in the Law, including through clearer auditing standards and more regular or risk-based review mechanisms, in order to enhance the effectiveness of oversight and public confidence in the integrity of political finance regulation; [para. 62]

4. to explicitly provide that the disclosure and publication of donor information be carried out in compliance with applicable personal data protection standards.; [para. 65]

G. Regarding supervision and oversight:

1. to grant the Agency for Prevention of Corruption enhanced investigative powers, including direct access to necessary databases to effectively carry out its investigative functions in cases where there has been an indication of wrongdoing by an individual party, and thereby effectively oversee political party and campaign finance; [para. 75]
2. to supplement the Law by providing political entities with clear and robust procedural safeguards to contest the decisions of the Agency within a reasonable timeframe; [para. 77]
3. to shorten the timeframe under Article 61 of the Law for state bodies, legal entities, and natural persons to submit information requested by the Agency in order to facilitate more timely and effective oversight and enforcement of political finance regulations; [para. 78]

H. Regarding sanctions:

1. to ensure the effectiveness of the regulatory framework by providing sanctions for all substantive obligations, either through an expanded catalogue of specific offences under Articles 67-73 of the Law or through the introduction of a general sanctioning clause covering all violations not explicitly subject to specific penalties; [para. 81]
2. to set out clear and precise criteria governing the conditions, scope, and procedural safeguards for the suspension or withholding of public funds in cases of violations of campaign financing rules, ensuring that such measures are to be applied only in cases of serious or repeated violations and in accordance with the principles of proportionality and legal certainty; [para. 82]
3. to consider introducing indexation mechanisms for fines so as to preserve their deterrent effect over time. [para. 88]

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

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

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I. INTRODUCTION

1. On 23 April 2026, the Vice President of the Parliament of Montenegro sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") a request for a legal review of the new Law of Montenegro on Financing of Political Entities and Election Campaigns adopted on 25 July 2025 and published in the Official Gazette on 29 July 2025 (hereinafter "the Law").
2. On 6 May 2026, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the Law to assess its compliance with international human rights standards and OSCE human dimension commitments.
3. Given the urgency indicated by the requestor, ODIHR agreed to prepare an Urgent Opinion, which does not provide a detailed analysis of all the provisions of the Law but primarily focuses on analysing whether the previous recommendations made by ODIHR in the 2024 Final Opinion on the previous version of the Law (hereinafter "Final Opinion")[1] have been taken into account when amending the Law. The Urgent Opinion also seeks to further elaborate on potential new issues arising from the provisions newly introduced in the Law. The absence of comments on certain provisions of the Law should not be interpreted as an endorsement of these provisions.
4. The present analysis should also be read in light of the several opinions on electoral and political party legislation of Montenegro published by ODIHR since 2024.[2]
5. This Urgent Opinion was prepared in response to the above request. ODIHR conducted this assessment within its general mandate to assist OSCE participating States in the implementation of their OSCE human dimension commitments.[3] ODIHR remains ready to continue providing legislative assistance, including through the review of draft amendments to the Law and other existing or draft legislation relating to political parties and electoral reform.

II. SCOPE OF THE URGENT OPINION

6. The scope of this Urgent Opinion covers the Law submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and

1 See ODIHR, *Final Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns*, 9 October 2024, which was prepared following a country visit that took place on 4-6 September 2024, during which the ODIHR *Preliminary Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns*, published on 31 July 2024, was presented and discussed with key stakeholders including the Co-Chairs of the Committee for Comprehensive Electoral Reform, members of the working group in charge of reforming the Law, representatives of political parties, the State Audit Institution, the Agency for the Prevention of Corruption, non-governmental organizations (NGOs) and other stakeholders.

2 Available here: <Legal reviews | Montenegro | LEGISLATIONLINE>, in particular ODIHR Opinion on the Law on Election of Councillors and Members of Parliament and the Law on Election of the President of Montenegro (2 June 2025), ODIHR Opinion on Laws Governing Voter Registration in Montenegro (2 June 2025), ODIHR Opinion on the Law of Montenegro on Political Parties (25 April 2025). See also previous ODIHR election observation reports on Montenegro.

3 See in particular, the *1990 OSCE Copenhagen Document*, para. 7.6., whereby the OSCE participating States committed to "*respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities*." See also Oslo Ministerial Declaration 1998, MC.DOC/1/98, stating "*Expression should be given to support for the enhancement of OSCE electoral assistance work and the strengthening of internal procedures to devise remedies against infringements of electoral rules, with the participating States invited to provide the ODIHR in a timely fashion with draft electoral laws and draft amendments to these laws for review so that possible comments can be taken into account in the legislative process*". See also 1999 Istanbul Document (Summit of Heads of State or Government), which states: "… *appreciate the role of the ODIHR in assisting countries to develop electoral legislation in keeping with OSCE principles and commitments, and we agree to follow up promptly ODIHR's election assessments and recommendations*".

institutional framework governing the financing of political parties and election campaigns, or elections and political parties more generally.

7. The Urgent Opinion raises key issues and highlights areas of concern. In the interest of conciseness, it focuses on those provisions that require amendments or improvements rather than on positive aspects of the Law. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations, as well as relevant OSCE human dimension commitments and international good practices, including the Joint Guidelines on Political Party Regulation issued by ODIHR and the Council of Europe's European Commission for Democracy through Law (hereinafter "Venice Commission").[4] Reference is also made to the relevant findings and recommendations from previous ODIHR election observation reports and legal opinions.[5] This Opinion should also be read in conjunction with the 2024 ODIHR Final Opinion on the previous Law of Montenegro on the Financing of Political Entities and Election Campaigns.[6]

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

9. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[7] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality[8] and commitments to mainstream gender into OSCE activities, programmes and projects, the Urgent Opinion integrates, as appropriate, a gender and diversity perspective.

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

III. LEGAL ANALYSIS AND RECOMMENDATIONS

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

11. For the relevant international human rights standards and OSCE commitments reference, is made to Section III.1 of the *ODIHR Final Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns* of 9 October 2024.

12. In addition, it should be noted that international standards on financing political parties and election campaigns continue to be shaped by the Conference of the States Parties

4 See the ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020).
5 See <Elections in Montenegro | Organization for Security and Co-operation in Europe>; and <Legal reviews | Montenegro | LEGISLATIONLINE>.
6 See ODIHR, *Final Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns*, 9 October 2024.
7 See *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Montenegro acceded to this Convention on 23 October 2006.
8 See *OSCE Action Plan for the Promotion of Gender Equality, adopted by Decision No. 14/04, MC.DEC/14/04* (2004), para. 32.

(CoSP) to UNCAC. In particular, the 2025 Resolution 11/7 of the CoSP underscores the importance of enhancing transparency in the financing of political parties and election campaigns, while addressing emerging risks associated with increasingly complex and indirect financing arrangements, as a core component of anti-corruption frameworks and prevention of economic crimes.[9]

2. GENERAL COMMENTS

13. At the outset, it is important to acknowledge that a number of provisions of the new Law reflect positive developments and address, fully or partially, several recommendations made by ODIHR in its 2024 Final Opinion, particularly with respect to the following:

- more balanced opportunities for accessing public funding for regular and election campaign activities for parties, with the increase from 20 to 30 per cent of public funds to be distributed equally among all parties with seats in Parliament or municipal assembly, and a corresponding decrease of those distributed proportionally to the seats won, while also increasing the pre-election allocation to 30 per cent, instead of 20 per cent previously (Recommendations A.2 and B.1);
- enhanced transparency of private funding by regulating transfer methods and clarifying the classification of funds (although still not addressing the potential loophole concerning membership fees), while clarifying the reporting modalities for non-financial contributions which counts toward legal limits on contributions and expenses and partially regulating loans as part of campaign finance regulation, clarifying that debt write-offs or loans under conditions different from market conditions are considered contributions and must be reported at their market value, although the status and reporting modalities for loans for annual party financing remain unclear (partial implementation of Recommendation D);
- introduction of provisions specifically defining and regulating "third parties", including third-party campaigning and reporting obligations of third parties (Recommendation D.5, although partially implemented - see also additional comments in Sub-Section 4.7 *infra*);
- requirement to report data on internet and social media advertising costs as part of the election campaign reporting, while providing for the immediate publication of election campaign reports upon receipt, and clarification of the rules and obligations on auditing of political parties (Recommendation F); and
- expansion of the powers of the Agency for Prevention of Corruption (partial implementation of Recommendation H).

14. The analysis below focuses primarily on recommendations from ODIHR's 2024 Final Opinion that have not been implemented or have only been partially implemented, as well as on potential new issues arising from the introduction of the new provisions. Accordingly, while acknowledging the positive developments outlined above, the following sections identify remaining gaps, ambiguities and areas where amendments could be considered at a later stage to further strengthen the legal framework and ensure its effective implementation. In any case, it is essential to ensure the overall coherence

9 See UNCAC Conference of the States Parties (CoSP), *Resolution 11/7 on Preventing and Combating Corruption through Enhancing Transparency in the Funding of Political Parties, Candidatures for Elected Public Office, and Electoral Campaigns*, adopted during the 11th session of the CoSP held in Doha, Qatar, from 15 to 19 December 2025, which highlights in particular the need to strengthen oversight mechanisms, including through improved inter-institutional co-operation, and to prevent undue influence as well as the circumvention of legal restrictions, while also reflecting a growing international recognition that political finance frameworks must adapt to evolving risks, including those arising from new technologies and increasingly sophisticated financial flows.

of the legal framework governing elections and political parties with the Law under review.

3. PUBLIC FUNDING

3.1. Public Funding of Regular Operations of Political Entities

15. ODIHR previously recommended reconsidering the overall amount of annual (and campaign) public funding for political parties but also reassessing the formula for allocating public funding for the regular activities of political entities, noting the risk of unduly benefitting larger political parties represented in parliament (or municipal assemblies).[10] It is therefore welcome that Article 13 of the new Law reflects a 10 per cent increase of the share of public funding allocated equally between all political parties represented in parliament (or municipal assemblies), with a corresponding decrease of the share distributed proportionally to the total number of seats won.[11] While this reduces the advantage conferred by the allocation formula to larger, well-established parliamentary political parties, public funding still remains available only to political parties represented in Parliament or municipal assemblies, thereby potentially perpetuating the inability of smaller, newly formed or less wealthy parties to get access to public funding for their regular activities, and to compete and function effectively.

16. Notwithstanding concerns previously expressed by ODIHR regarding the already comparatively high level of public funding for the regular activities of political entities,[12] the revised Law increases the corresponding budget allocation from 0.5 per cent to 0.8 per cent of the planned total state budget funds (Article 13 (1)). This increase may further reinforce the advantage of political parties already represented in Parliament and eligible to receive such funding, while potentially disadvantaging smaller or newly established parties that do not qualify for public support. It may also contribute to increasing the overall dependency of political parties on public funding. **The overall amount of public funding for parties' regular activities should be reassessed and reduced with a view to find the right balance between providing meaningful support to political parties, including smaller and newly established ones, but not creating conditions for over-dependency on state support** (see also Sub-Section 3.2. *infra* regarding public funding of election campaigns).

17. ODIHR thereby reiterates the recommendation **to consider a threshold for accessing public funding for parties' regular activities lower than the electoral threshold for obtaining a seat in the Parliament (or municipal assemblies), with a view to give more weight to political parties that have proven a certain level of citizen support**

10 See ODIHR, *2024 Final Opinion*, paras. 29-32, which noted that the allocation criteria contained in the previous Law tended to favour larger parties, especially those already holding mandates, thereby potentially perpetuating the difficulties faced by smaller, newly established, or less financially resourced parties in competing and functioning effectively. See also *ODIHR Final Report* on Early Parliamentary Elections in Montenegro, 11 June 2023, pp. 15-16, noting that *"[s]uch a high amount of annual and campaign public funding [of parliamentary political parties], though, contributes to unequal financial opportunities of the contestants."*

11 According to Article 13 of the previous version of the Law, funds from public sources for regular activities of political entities in the Parliament are set at 0.5 per cent of the State budget. Funds for regular activities of political entities in local assemblies are set at 1.1 per cent of the budget. For municipalities with budgets under five million euros, funding ranges between 1.1 and 3 per cent of the total planned budget, excluding capital budgetary assets, for the fiscal year. Of these funds, 20 per cent is allocated equally to political entities "*that win seats in the Parliament, and municipal assemblies respectively*" while the remaining 60 per cent is distributed proportionally to the total number of MP and councillor seats they have at the time of distribution. In addition, the remaining 20 per cent is distributed equally among political entities in the Parliament or municipal assemblies, proportional to the number of elected representatives of the less represented gender.

12 See ODIHR, *2024 Final Opinion*, para. 32. See also *ODIHR Final Report* on Early Parliamentary Elections in Montenegro, 11 June 2023, pp. 15-16, noting that *"[s]uch a high amount of annual and campaign public funding [of parliamentary political parties], though, contributes to unequal financial opportunities of the contestants." See also ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 233.

even if they have not obtained seats in the Parliament or municipal assembly.[13] This would help ensuring that non-parliamentary parties also become eligible when they enjoy a minimum level of citizen support[14]. At the same time, it should be noted that Montenegro's electoral framework exempts parties representing minority communities from the application of the 3 per cent electoral threshold, thereby enabling such parties to qualify for public funding for the regular activities of political parties notwithstanding the general threshold requirement. As a result, in practice, a number of political parties that do not meet the general electoral threshold may nevertheless obtain parliamentary representation through the allocation of a single mandate and thereby become eligible for public funding for the regular activities of political parties.

18. In addition, legislation should put in place **effective review mechanisms aimed at periodically determining the impact of current public financing** and, as needed, altering the amount of funding allocated and **it is recommended to supplement the Law in this respect**.[15]

19. Finally, as was recommended in the 2024 Final Opinion, the **monthly distribution of public funds for the regular operation of political entities**, which creates an unnecessary administrative burden **should be reconsidered and replaced by a longer time span**.[16]

RECOMMENDATION A.

To establish a threshold based on number of votes received for access to public funding for political parties' regular activities that is lower than the electoral threshold required to obtain seats in parliament or municipal assemblies, to ensure that non-parliamentary parties also become eligible.

3.2. Public Funding of Election Campaigns

20. The Law provides for direct public funding of parties' election campaigns. Allocating public funding in a clear, objective and equitable manner is essential to fight corruption and reduces the dependency of political parties on wealthy individuals, as well as to ensure that all parties are able to compete in elections in accordance with the principle of equal opportunities.[17]

21. For parliamentary and local elections, 0.25 per cent of the state budget are allocated for election campaign costs (Article 20). Within this allocation, 30 per cent – as opposed to 20 per cent in the previous Law, is evenly distributed among all electoral list submitters within eight days from the expiry of deadline for submission of the electoral lists. The remaining 70 per cent – as opposed to 80 per cent previously, is distributed proportionally

13 See ODIHR, *2024 Final Opinion*, paras. 30-31 and 36. See also *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, paras. 225 and 242.

14 Comparative OSCE practice indicates that Montenegro maintains relatively restrictive eligibility criteria for the allocation of direct public funding (DPF) to political parties. In particular, Montenegro belongs to a minority of OSCE participating States (approximately 23 per cent) that restrict eligibility for DPF exclusively to parliamentary parties. In addition, among OSCE participating States that provide DPF, a majority apply electoral thresholds below 3 per cent for access to such funding, while only a more limited number maintain thresholds at or above this level. Five OSCE participating States do not provide direct public funding to political parties.

15 See ODIHR, *2024 Final Opinion*, para. 32 and references therein. See also *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 233.

16 See ODIHR, *2024 Final Opinion*, para. 33. See also e.g., Recommendation 4 of the *CoE Horizontal Facility Technical Paper*.

17 See ODIHR, *2024 Final Opinion*, para. 34. See also *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 232.

among submitters whose candidates have secured seats in the election, based on the number of seats won by each list.

22. The amended Article 20 of the Law introduces a more balanced approach to the allocation of public funding for election campaigns, including by increasing the pre-election allocation to 30 per cent, instead of 20 per cent previously, thereby partially addressing previous ODIHR recommendations.[18] The revised allocation formula may contribute to enhancing equality of opportunities and political pluralism by providing greater initial financial support to smaller, newly established, or less resourced parties during the campaign period. At the same time, other aspects of the allocation system remain unchanged, including the mandate-based distribution criteria of 70 per cent on the basis of seats obtained rather than proportion of vote shares – thereby still favouring larger and incumbent parties with established parliamentary representation, as well as the timing of the initial disbursement of public funds for election campaigns. In this respect, ODIHR specifically recommended **taking into account the number of votes – lower than the electoral threshold – rather than the number of mandates obtained in parliament or municipal assemblies**[19] **as well as providing for earlier disbursement shortly after candidate registration or submission of electoral lists**, rather than eight days from the expiry of deadline for submission of the electoral lists.[20]

23. Likewise, no changes have been made to the comparatively high campaign expenditure limits, which remain set at an amount equivalent to the total public funding allocated for the campaign.[21] **To enhance the equality of campaign opportunities, it is recommended to the legal drafters to review and consider decreasing the campaign expenditure limits and the amount of public funding allocated for the campaign and generally for the regular activities of political parties**, assessing the maximum that a political entity could reasonably expect to spend and the need to restrict spending sufficiently so that small parties are not excessively disadvantaged, among others.[22]

24. The legal drafters should also consider the recommendations from the 2024 Final Opinion with regard to possible introduction of indirect support to political entities, such as providing tax exemptions for party activities, equitable access to free media airtime (especially when paid advertising is restricted during electoral campaigns) – with due

18 See ODIHR, *2024 Final Opinion*, para. 36. See also *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 238, which notes that *"[w]hen developing allocation systems, careful consideration should be given to pre-election funding systems, as opposed to post-election reimbursement, as the latter can perpetuate the inability of small, new or less wealthy parties to compete effectively. A post-election funding system may not provide the minimum initial financial resources necessary to fund a political campaign.*" See also Article 1 of the Appendix to *Recommendation Rec(2003)4 of the Committee of Ministers to member states On Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns.* See also ODIHR *Opinion* on Certain Provisions of the Law on Financing of and Control of Funding of Political Campaigns of Lithuania (2018), para. 29; and ODIHR and Venice Commission, *Joint Opinion on the Draft Constitutional Law on Political Parties of Armenia* (2016), para. 48. See also ODIHR *Final Report* on Early Parliamentary Elections in Montenegro, 11 June 2023; and *Report on the misuse of administrative resources during electoral processes,* adopted by the Council for Democratic Elections at its 46th meeting (Venice, 5 December 2013). See also *ODIHR Opinion* on the Draft Law on Political Parties of Mongolia (2019), para. 43, and ODIHR and Venice Commission, *Joint Opinion* on the Law on Political Parties in Azerbaijan (2023).

19 While a proportional approach to the allocation of public funding based on a party's election results is generally considered to be equitable, it is in the interest of political pluralism to condition the provision of public support on attaining a lower threshold than the electoral threshold for the allocation of a mandate in parliament; see the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 238.

20 See ODIHR, *2024 Final Opinion*, paras. 36 and 38. See also *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 239.

21 See ODIHR, *2024 Final Opinion*, paras. 32 and 42; and *ODIHR Final Report* on Early Parliamentary Elections in Montenegro, 11 June 2023, p. 16, which notes that the campaign expenditure limit and the amount of public funding appear unreasonably high which may lead to excessive spending with a potential undue impact on voters. See also *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 248: "*It is reasonable for a state to determine the criteria for electoral spending and a maximum spending limit for participants in elections, in order to achieve the legitimate aim of securing equity among candidates and political parties. Parties will also need to distinguish between electoral expenses and other party expenditures. The legitimate aim of such restrictions must, however, be balanced with the equally legitimate need to protect other rights, such as those of free association and expression. This requires that spending limits be carefully constructed to not be overly burdensome. The maximum spending limit usually consists of an absolute or relative sum determined by factors such as the voting population in a particular constituency and the costs for campaign materials and services.*" See also Recommendation 10 of the *CoE Horizontal Facility Technical Paper*.

22 See ODIHR, *2024 Final Opinion*, paras. 32 and 42. See also *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation.*

account of ensuring gender balanced visibility of candidates, free postage for publications, and free use of public meeting halls for party activities.[23]

25. Other ODIHR recommendations related to campaign expenditures are also not reflected in the new Law, especially with respect to the **monitoring of campaign expenditures, which should start from the call of elections and should include all forms of traditional and online campaigning, including campaign events and Google Ads, as well as other important platforms, to the extent possible**.[24] In addition, it is essential to envisage more effective measures to address the concerning issue of violence against women in politics, and effective sanctions such as possible withdrawal of public electoral financing on this basis could be considered, providing that the process of deciding on such withdrawal presents all safeguards and guarantees of the contestants, along with an independent body to scrutinize the media and online space.[25]

RECOMMENDATION B.

1. To take into account the number of votes – lower than the electoral threshold – rather than the number of mandates obtained in parliament or municipal assemblies for the allocation of public funding for electoral campaigns.
2. To review and consider decreasing the campaign expenditure limits and the amount of public funding allocated for election campaigns.

1.3. Gender and Diversity Considerations

26. Article 13 of the new Law retains similar provisions as the previous Law regarding the distribution of 20 per cent of public funding for the regular operations of political entities distributed among political entities in the Parliament or municipal assemblies, proportionally to the number of elected representatives of the less represented gender. These public funds amounting to 0.05 per cent of the planned total budget funds (and 0.11 per cent for municipal assembly) are allocated on an equal basis and are intended to finance exclusively women organizations within a political entity and used in line with their respective statutes (Article 14 of the new Law, which uses a wording similar to the previous version of the Law). While the earmarking of such funds to women organizations is in principle in line with international good practice and recommendations,[26] ODIHR recommended to substantially strengthen the oversight framework governing the use of these funds. While an amendment introduced in the new Law consists of an explicit obligation for political entities to include in their annual financial reports information on *"the manner and purpose of spending funds for regular financing of women's organizations in political entities*" (Article 52 of the new Law) with possible sanction in case of non-compliance (as per Article 69 (43)), it should be noted that similar requirements were already contained in the previous version of the Law and have been retained in Article 14 of the revised Law. As such, the amendment appears

23 See ODIHR, *2024 Final Opinion*, para. 43. See also ODIHR-Venice Commission, *Joint Opinion on the Draft Law on Political Parties of Mongolia* (2022), para. 99.

24 See ODIHR, *2024 Final Opinion*, para. 44; and *ODIHR Final Report* on Early Parliamentary Elections in Montenegro, 11 June 2023, p. 12.

25 See ODIHR, *2024 Final Opinion*, para. 45; and *ODIHR Final Report* on Early Parliamentary Elections in Montenegro, 11 June 2023, p. 15, which notes that violence against women in politics is especially acute in the online sphere in Montenegro, which deters some women from taking an active part in political life See also e.g., *Inter-American Model Law On the Prevention,Punishment and Eradication of Violence Against Women in Political Life* (2017), Article 37 (g). See also ODIHR, *Addressing Violence Against Women in Politics in the OSCE Region Toolkit - Tool 1: Introduction to Violence Against Women in Politics* (2022).

26 See PACE Resolution 2111 (2016) "Assessing the impact of measures to improve women's political representation", para. 15.3.4, recommends to "*ensure that part of the public funding of political parties, when applicable, is reserved for activities aimed at promoting women's participation and political representation and guarantee transparency in the use of the funds*".

primarily to strengthen the visibility and explicitness of the reporting obligation, rather than to introduce substantively new oversight or accountability mechanisms concerning the use of these funds, and its effectiveness in practice remains questionable.

27. More significantly, contrary to what was recommended in the 2024 Final Opinion,[27] the new Law does not establish a clearer list of possible permissible purposes for which funds allocated to women's organizations may be used nor adequate sanction mechanisms in case of non-compliance, despite actual concerns in Montenegro that such funds tend to be diverted to activities unrelated to the advancement of women's political participation.[28] Nor does it require more detailed transparency and reporting obligations on women's participation within political parties, including sex-disaggregated information relating to party membership, candidacies, leadership positions, and activities aimed at promoting women's participation in political life.[29] This would help assessing whether the funding effectively contributed to reducing the gender gap in political participation and representation.[30] **ODIHR thereby reiterates its recommendations pertaining to the public funds for financing parties' women's organizations, including to detail in the legislation the list of eligible and non-eligible expenditures, further strengthen control over party spending for that purpose, with effective sanction mechanism.**[31]

28. The Final Opinion noted the absence of sanctions for violations of Article 14 of the Law by political entities and the misuse or improper allocation of funds,[32] a concern that remains largely unaddressed in the new Law, with the exception of cases involving the failure to submit consolidated financial reports detailing the use of funds allocated pursuant to Article 14 (9), for which the suspension of further payments is envisaged.[33]

29. In this context, the recommendation contained in the Final Opinion remains pertinent, namely that any **sanctioning mechanism should be designed in a manner that does not adversely affect the functioning or financing of women's organizations themselves, including through the reduction or suspension of funds specifically allocated to them.**[34] **Rather, sanctions should be directed at the political entity responsible for the violation**, not the women's organization.

30. Finally, as recommended in the Final Opinion, **additional public financial incentives could be considered to further promote the political participation of women, such as conditioning an additional part of the public funding to a minimum level of representation of women in party leadership positions or to those political parties which have adopted gender action plans**.[35] **It would also be beneficial to consider the**

27 See ODIHR, *2024 Final Opinion*, paras. 94 and 96.
28 See ODIHR, *2024 Final Opinion*, para. 47. See ODIHR *Final Report on Early Parliamentary Elections in Montenegro*, 11 June 2023, page. 16, which notes that although by law the lack of such information on use of the funds in a party's annual financial report should be sanctioned with discontinuation of public funding, none of the parties faced any consequences for their non-compliance.
29 See ODIHR, *2024 Final Opinion*, para. 48.
30 See ODIHR *Final Report on Early Parliamentary Elections in Montenegro*, 11 June 2023, page. 16.
31 Eligible expenditures could include e.g., the establishment or enhancement of women party caucuses, associations or other similar structures as well as training for women candidates, programmes related to women's empowerment, relevant public awareness-raising and educational campaigns, promotion and support to women candidates' campaigning, measures to combat discrimination and violence against women in politics, etc. while the types of expenditures it should not be used for could include contribution to the salary of staff unrelated to the work of the women's organization or to generic activities such as conferences and meetings, unrelated to the promotion of women's participation; see ODIHR, *2024 Final Opinion*, paras. 48-49; and *ODIHR Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region* (2016).
32 See ODIHR, *2024 Final Opinion*, para. 49.
33 There are penal provisions relating to Article 14 in Article 71.7-12 of the new Law, but these all relate to potential violations by responsible person in a state body, state administration body, local self-government body, local government body, public institution, state fund and company founded and/or majority or partially owned by the state or municipalities, not by political entities.
34 See ODIHR, *2024 Final Opinion*, para. 49.
35 See ODIHR, *2024 Final Opinion*, para. 50. See also ODIHR-Venice Commission, *Joint Opinion on the Draft Law of Mongolia on Political Parties*, CDL-AD(2022)013, para. 26, referring to 40 per cent in line with good practices at the international level. See also the *1979 CEDAW Convention,* Articles 3 and 7, and the *2024 CEDAW General Recommendation No 40 on the equal and inclusive*

introduction of additional targeted support measures aimed at promoting broader political inclusion and more diverse participation of underrepresented or marginalized groups, for instance through other separate funds to support specific youth organizations, persons with disabilities, minorities within parties, including for awareness-raising and educational campaigns among politicians, in the media and among the general public, about the need for the full, free and equal democratic participation in political and public life.[36]

RECOMMENDATION C.

1. To clearly specify in the Law the types of activities that may be supported by public funds specifically allocated for financing parties' women's organizations to enhance full and free participation of women in political and public life on an equal basis with men;
2. To strengthen the monitoring and oversight of spending of public funds dedicated to parties' women's organizations, while applying proportionate sanctions in case of non-compliance, including for failure to report on eligible expenditures and ineligible expenditure, while ensuring that the sanction mechanism does not adversely affect the functioning or financing of parties' women's organizations.
3. To consider introducing public funding mechanisms to support the political participation of other underrepresented persons or groups, including young people, persons with disabilities, minorities within parties.

4. PRIVATE FUNDING

4.1. General Comments

31. As underlined in the 2024 Final Opinion, private funding constitutes an important complementary form of support and a means of citizen participation, enabling individuals to freely express support for political parties or candidates through financial or in-kind contributions, subject only to reasonable contribution limits, transparency requirements, and possible ban on certain sources of funding (see Sub-Section 5 *infra*).[37]

32. Article 6 of the new Law retains the definition of private sources, as meaning: membership fees, contributions, legacies and borrowing from banks and other financial institutions in Montenegro, while Article 7 (2) prohibits income from promotional or

representation of women in decision-making systems (CEDAW/C/GC/40), paras. 45(d). and 51(e). See also Council of Europe Committee of Ministers, *Recommendation Rec (2003)3 on the balanced participation of women and men in political and public decision-making*, 30 April 2002, preamble of the Appendix, which specifies that "*balanced participation of women and men is taken to mean that the representation of either women or men in any decision-making body in political or public life should not fall below 40%*". See also the CEDAW, the CRPD, the Beijing Declaration and Platform for Action (United Nations, Beijing Declaration and Platform for Action), CoE Recommendation Rec(2003)3 of the Committee of Ministers to member states on Balanced Participation of Women and Men in Political and Public Decision Making (adopted on 12 March 2003), and *OSCE Ministerial Council Decision No. 7/09 on Women's Participation in Political and Public Life*, 4 December 2009. See also *International IDEA Funding of Political Parties and Election Campaigns*, p. 354. See also *ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain*, para. 70.

36 Notably, consideration could be given to extending earmarked funding incentives to persons with disabilities (PwDs) and youth, with conditionalities linked either to levels of representation or to the adoption of action plans, including provisions on youth wing statutes and frameworks for financial autonomy. This would take into account the sometimes loose relationship between main party structures and their youth wings. See ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019); *Addressing Violence against Women in Politics In the OSCE Region: Toolkit* (especially Tool 3 for Political Parties) (2022); *Handbook on Promoting Women's Participation in Political Parties* (2014); OSCE High Commissioner on National Minorities, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999).

37 See *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, paras. 209-213.

commercial activities (former Article 8 (2)). As indicated in the Final Opinion, parties should be able to utilize proceeds from merchandise sales or party-related materials for their campaigns and operations.[38] A blanket prohibition considerably limits parties' fundraising options, a restriction that may have the greatest impact on the smallest parties that qualify for little or none of the public funding for regular work. As indicated in the Joint Guidelines, parties that generate income through the sale of merchandise or party-related materials should be able to utilize these funds for their campaigns and operations[39]**.** Such approach**, if carefully regulated to prevent circumvention of donation restrictions, would be to apply all transparency, disclosure and contribution requirements, including donation caps, as appropriate**.[40]

4.2. Private Funding of Regular Operations of Political Entities

33. As with the previous version of the Law, according to Article 15 (1) of the new Law, private donations to finance regular political entities' activities, irrespective of whether they are from a physical or legal person, cannot exceed the total amount that a political entity has received from the state budget, while the ceiling for political entities without a parliamentary seat remains set at 10 per cent of the total amount of the funds designated by the State for the financing of parliamentary parties (Article 15 (2)). The new Law increases the annual cap for private donations by natural persons from EUR 5,000 to EUR 10,000 per political entity while maintaining the donation cap for legal persons at EUR 20,000 annually (Article 15 (4)). As noted in the 2024 Final Opinion and in the Joint Guidelines, increasingly, states tend to ban donations from companies to political parties and election candidates,[41] and depending on the country context, if donations from companies tend to create a distortion in the political process in favour of wealthy interests or to increase corruption, such a ban may be contemplated. In any case, as recommended in the 2024 Final Opinion, **to account for inflation donation limits should preferably not be set as absolute amounts but rather subject to indexation mechanisms tied to objective economic indicators, such as a minimum salary value**.[42]

34. Finally, the 2024 Final Opinion (Articles 58 and 59) recommended provisions for waiving membership fees in cases of financial hardship, and **to treat party membership fees as donations to avoid the risk of membership fees being used as a way of bypassing donation limits**.[43] These remain unaddressed in Article 6 in the new Law and could be considered in future amendments.

4.3. Private Funding of Election Campaigns

35. Financing rules regarding political parties' campaigning should, in principle, follow similar key parameters as those envisaged for the funding of the parties' statutory activities (see Sub-Section 4.2 *supra*). In line with recommendations contained in the Final Opinion,[44] the new Law now expressly establishes donation limits applicable to parliamentary elections, which are set at half the level permitted for presidential election

38 *Ibid.*, para. 225, while ensuring the necessary safeguards to prevent the circumvention of contribution limits..
39 See *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 225.
40 See ODIHR, *2024 Final Opinion*, para. 54.
41 See ODIHR, *2024 Final Opinion*, para. 57; and *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 214.
42 See ODIHR, *2024 Final Opinion*, para. 57.
43 See ODIHR, *2024 Final Opinion*, paras. 58-59. See also *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 208. See also, concerning membership fees, *GRECO third evaluation report on Montenegro*, 3 December 2010, para. 68. See also *ODIHR and Venice Commission Joint Opinion* on the draft law on financing political activities of the Republic of Serbia, 20 December 2010, para. 15; and *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 207.
44 See ODIHR, *2024 Final Opinion*, para. 62.

campaigns, namely EUR 2,500 for natural persons and EUR 5,000 for legal entities (Article 23).

36. According to the Law, for all elections, political entities can raise funds from private sources only during the election campaign (Articles 23 and 29). According to Article 23 (2), in parliamentary and local elections, private funding for an electoral campaign cannot exceed twenty times – as opposed to thirty times previously – the amount a party receives from the state budget under Article 20 (2) of the Law (30 per cent from 0.25 per cent of the state budget in equal amounts to the political entities, see para. 21 *supra*). For presidential elections, private funding is limited to 0.07 per cent of the total planned current budget (Article 29 (2)).

37. This amendment lowering the threshold for private contributions to finance the election campaign costs may be regarded as strengthening safeguards against excessive private influence in electoral campaigns and potentially contributing to a more level playing field among political entities by limiting disparities in fundraising capacity. At the same time, the reduction in the permissible threshold may further increase reliance on public funding and could have a differential impact on smaller or newly established political parties depending on their access to private sources of support.

38. The recommendation from the 2024 Final Opinion **to subject sponsorships to the same limitations as other contributions to prevent circumvention of contribution limits remains unaddressed and should be considered in the future**.[45]

4.4. Regulation of In-kind Support

39. In addition to financial donations, which are regulated by the Law both in the context of regular operation and election campaigns (see Sub-Sections 4.2 and 4.3 *supra*), it is essential that **the legislation carefully regulates in-kind**[46] **support by private donors, both by individuals and by legal persons**.[47]

40. It is overall welcomed that the new Law includes more elaborated provisions concerning the calculation of the value of non-monetary donations, notably in Article 6 (8) and (9), thereby partially addressing the concerns raised in the Final Opinion.[48] At the same time, the provision contained in the previous Law stipulating that *"[t]he method of calculating and reporting of non-financial contributions shall be determined by the rules of the Agency*" has not been retained in the new text. In the absence of such an explicit mandate, there may be a risk of inconsistent interpretation and application of the valuation rules in practice. Clear and transparent valuation rules are essential to ensure effective oversight of political financing, prevent circumvention of donation limits, and promote consistency in financial reporting and auditing practices. In line with the recommendation in the Final Opinion referring to the adoption of supplementary secondary legislation, **it is recommended that the competent Agency be expressly empowered to adopt detailed rules and methodologies governing the calculation, reporting, and verification of non-monetary contributions.**

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

46 i.e., "*all gifts, services, or property provided free of charge or accounted for at a price below market value*"; see *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 216.

47 Generally, this type of support should follow the same rules and be subject to the same restrictions as financial donations; for that purpose, the monetary value of in-kind donations should be determined based on market price and should be listed in funding reports; see *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 216. See also ODIHR, *2024 Final Opinion*, paras. 63-65.

48 *Ibid*, ODIHR, *2024 Final Opinion*, paras. 63-65, which noted that the previous version of the Law (Article 7) contained only limited guidance on the methodology for valuing non-monetary (in kind) contributions and recommended, in the interest of legal certainty and consistent implementation, that the general rules governing the calculation and reporting of non-monetary contributions be clearly set out in the Law itself and further supplemented through secondary legislation.

41. While membership fees and sponsorships are still not explicitly defined as contributions (see para 34 *supra*), the rules on in-kind donations, combined with the prohibition in Article 34(1) on offering any consideration in return for gifts, may in practice make it more difficult to design sponsorship arrangements that comply with legal requirements.

4.5. Regulation of Loans

42. The new Law introduces a new provision stating that political entities are responsible for repaying loans (Article 6 (13)). It is noted that Article 6 (3) of the new Law specifically mentions "*borrowing from banks and other financial institutions and organizations under more favourable conditions in regard to market conditions, as well as writing-off parts of debts*" among other types of private non-financial contributions (as Article 7 (3) of the previous Law). While the new Law provides greater clarity regarding the entities from which loans may be obtained, limiting them to financial institutions *registered in Montenegro* (Article 6 (9), (10), (11)), it does not introduce specific regulation or reporting requirements concerning political parties' bank loans.[49] As underlined in the 2024 Final Opinion, it is important to regulate them separately and provide specific limitations and reporting requirements.[50] Otherwise, it may be difficult to identify situations where loans are effectively used as a means of providing indirect support or circumventing donation limits, such as where political parties default on repayment without consequence (amounting to a *de facto* donation), or where loans are subsequently repaid by private individuals.[51]

43. As recommended in the Final Opinion, the Law should specify that **unserviced loans and those left unpaid by the time of the final campaign finance report should be considered as donations and require that financial reports include comprehensive listing of loans, including detailed terms and conditions.**[52] In addition, the legal drafters could **consider providing requirements that parties' expenditures limits be balanced against their income, while limiting the overall level of bank loans and credits that a party may obtain annually, potentially linking the overall amount of the loans to the percentage of total funding otherwise received.**[53]

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

44. Election campaign costs are defined in the Law as the costs incurred by political entities in conducting election campaigns (Article 16 (1)).[54] The new Law further contains specific provisions concerning the financing of presidential candidates (Articles 28-32) and the activities of third parties (Articles 49-50). However, the new Law does not regulate the role of candidates in elections other than presidential elections, notably candidates for deputies and councillors. In particular, the Law remains silent as to whether such candidates may raise funds independently from their political entities or use their own funds and, if so, whether such activities are subject to restrictions concerning permissible sources of funding, donation limits, expenditure ceilings, reporting

49 See ODIHR, *2024 Final Opinion*, para. 71. According to ODIHR-Venice Commission Joint Guidelines on Political Party Regulation, in some states, political parties are required to provide information concerning outstanding loans, the corresponding awarding entity, the amount granted, the interest rate, and the period of repayment; in such countries, specific measures were also taken to ensure that the reimbursement of loans complies with the terms with which they have been granted (see *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*. para. 260).
50 See ODIHR, *2024 Final Opinion*, para. 69.
51 *Ibid.* paras. 71-72. See also *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 210.
52 *Ibid.* paras. 72-73.
53 See ODIHR, *2024 Final Opinion*, para. 69.
54 Article 16 is under the heading focusing on elections of deputies and councillors. There is no similar definition in relation to presidential elections.

obligations, and transparency requirements.[55] With regard to presidential elections, Article 30 (5) provides that campaign expenditures may not exceed the combined amount of public funding allocated to the candidate and the maximum amount that may be raised from private sources but the Law does not clarify whether personal funds contributed by presidential candidates themselves are included within this expenditure ceiling or otherwise subject to regulation.

45. Moreover, the new Law does not include limitations on donations from nominating political parties to election campaigns in a manner similar to the restrictions applicable to other legal entities.[56] As noted in the Final Opinion, the absence of such regulation may create legal uncertainty and leave room for circumvention of political finance rules.[57] ODIHR therefore reiterates the recommendations from the 2024 Final Opinion to **clarify the legal framework governing the raising and spending of campaign funds by candidates for deputies and councillors, including the applicable transparency and accountability requirements, as well as to regulate the use of own resources by candidates and related donation limits, while introducing limitations on donations from nominating political parties to election campaigns in a manner similar to the restrictions applicable to other legal entities**;[58] this could be done, for instance, by including political parties among the legal entities subject to donation limits under Articles 23 and 29 of the Law. Such an approach could help prevent undue advantages for wealthy candidates and larger or parliamentary parties with greater access to financial resources and contribute to a more level playing field among electoral contestants.

46. In line with the above, should personal funds contributed by presidential candidates be considered part of the private contributions permitted for election campaigns, **the Law should expressly provide that such funds are to be deposited into the designated bank account of the presidential candidate, as required under Article 30 (4).** Such a requirement should similarly be applicable with respect to other candidates, for deputies and councilors, as this would contribute to greater transparency, traceability, and effective oversight of campaign financing.

4.7. Third Party Involvement in Political Campaigns

47. The new Law introduces provisions regulating third-party campaigning during elections (Articles 49-50), which is a positive development as this addresses a significant gap previously identified in the legal framework.[59] The regulation of third-party campaigning may contribute to greater transparency and accountability in electoral financing and help reduce the risk of circumvention of political finance rules through unregulated actors.

48. Third-party campaigning is defined as a paid activity exceeding EUR 1,000 carried out during an election campaign by a third party, not legally affiliated with a political entity, and which "*aims to positively or negatively influence the election campaign of one or more political entities*" (Article 49 (2)). Spending by such entities is capped at EUR 10,000, corresponding to the maximum amount that a legal person may donate to a presidential campaign (and twice the amount permitted for donations to a political party's

55 See ODIHR, *2024 Final Opinion*, para. 75.
56 See ODIHR, *2024 Final Opinion*, para. 74.
57 See ODIHR, *2024 Final Opinion*, para. 75. See also *ODIHR Final Report on Early Parliamentary Elections in Montenegro*, 11 June 2023, p. 15.
58 See ODIHR, *2024 Final Opinion*, paras. 77- 81; and *ODIHR Final Report on Early Parliamentary Elections in Montenegro*, 11 June 2023, p. 16. See also *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, paras. 255-256; and UNCAC Conference of the States Parties (CoSP), *Resolution 11/7 on Preventing and Combating Corruption through Enhancing Transparency in the Funding of Political Parties, Candidatures for Elected Public Office, and Electoral Campaigns*, operative paragraph 9.
59 See ODIHR, *2024 Final Opinion*, paras. 74-75.

parliamentary campaign). Third parties are required before commencing activities, to open a special bank account with an institution authorized for payment transactions, and to notify the Agency thereof within three days of the date of opening the account. Within 30 days following the elections, they are also expected to submit a report to the Agency detailing their campaign revenues and expenditures (Article 50). Sanctions are envisaged for non-compliance with these requirements. The Law also prohibits third parties from concluding contracts under which they would bear the costs of the election campaign of a political entity (Article 49 (5)). This provision is welcomed, as it partially addresses previous ODIHR recommendations[60] and seeks to prevent indirect financing arrangements that could obscure the true source of campaign support and undermine transparency in campaign financing.

49. At the same time, certain gaps remain in the regulatory framework governing third-party campaigning introduced by the new Law. In particular, the Law does not define which types of entities qualify as third-party campaigners (e.g. whether this category includes only legal entities or also natural persons)[61]. It is further silent on the methodology for attributing and accounting for the costs of third-party campaigning conducted in support of a specific political party or candidate. Specifically, it remains unclear whether such expenditures should be aggregated with the overall campaign expenditure of the benefiting political entity or treated as separate from it. If the latter approach is intended, the regulatory framework does not specify safeguards to prevent the circumvention of applicable limits on donations and campaign expenditures through third-party actors. Article 49 does not expressly apply to third parties the restrictions concerning permissible and prohibited sources of funding that are applicable to political entities under Article 6 of the Law (see also Article 69 (36)).[62] As a result, the Law does not currently restrict the sources from which third parties may receive funding, including potentially from entities that are themselves prohibited from financing political activities or engaging in third-party campaigning. This omission is highly problematic as it creates a risk that donation restrictions be circumvented by channelling campaign support from prohibited sources through third parties, such as funding originating from foreign or state-controlled sources. **In order to ensure the effectiveness and coherence of the political finance framework, it is recommended that the Law expressly provide that the same rules governing permissible and prohibited donors applicable to political entities also apply to third parties engaged in election campaigning**.

50. From the perspective of protecting freedom of expression, it is positive that Article 49 (9) specifies that the expression of views on issues of public interest by non-governmental organisations (NGOs), religious organizations, media outlets, or individuals shall not be considered third-party campaigning. This safeguard may help ensure that the regulation of third-party activities does not unduly interfere with legitimate public debate and civic participation during election periods. At the same time, given the potentially broad and sensitive distinction between issue-based advocacy and regulated campaign activity, the effective implementation of this provision would benefit from further guidance by the competent oversight institution[63], including clear interpretative criteria and practical guidance to ensure consistent application of the Law and mitigate the risk of arbitrary or overly broad enforcement.

60 See ODIHR, *2024 Final Opinion*, para. 63.

61 It should be noted, however, that Article 49 prohibits third-party campaigning by natural persons who do not possess voting rights in Montenegro, thus it appears, by implication, to permit natural persons who are eligible voters to engage in third-party campaigning.

62 See ODIHR, *2024 Final Opinion*, para. 78.

63 Given the complexity and sensitivity of this issue, it would be strongly advisable for parliament to provide further information to the competent oversight institution regarding the interpretation of this provision.

51. Article 27 of the Law requires political entities to designate a "responsible person" tasked, inter alia, with communication and co-operation with the Agency, while Article 32 establishes a similar requirement for presidential candidates. No equivalent obligation exists for third parties engaged in election campaigning. Moreover, third parties are not subject to any formal registration requirement[64] with the Agency, beyond notifying it of the opening of a designated bank account. Although Article 50 specifies that the Agency keeps records of third parties, in the absence of a clearly identified responsible representative, effective communication, oversight, and enforcement by the Agency may be significantly hindered. **It is therefore recommended that the Law introduce a requirement for third parties to designate a responsible person in charge of compliance and communication/co-operation with the Agency**, similar to the obligations already applicable to political entities and presidential candidates.

RECOMMENDATION D.

1. To introduce an automatic annual indexation mechanism for donation limits, tied to objective economic indicators, such as a minimum salary value, instead of absolute amounts.
2. To treat party membership fees as donations to avoid the risk of membership fees being used as a way of bypassing donation limits
3. To specify that unserviced loans and those left unpaid by the time of the final campaign finance report should be considered as donations and require that financial reports include comprehensive listing of loans, including detailed terms and conditions, and consider limiting the overall level of bank loans and credits that a party may obtain annually, potentially linking the overall amount of the loans to the percentage of total funding otherwise received.
4. To apply the same donation limits to the nominating party contributing to the election campaigns as the one applicable to contributions from legal entities or companies for financing of the election campaign, i.e., EUR 20,000, while also regulating the use of own resources by candidates and related donation limits.
5. To expressly provide that the same rules governing permissible and prohibited donors applicable to political entities also apply to third parties engaged in election campaigning, while also introducing a requirement for third parties to designate a responsible person for compliance and communication and co-ordination with the Agency.

5. BANNED SOURCES OF FUNDING

52. Article 33 of the new Law prohibits donations from other states, companies, entrepreneurs and legal entities headquartered outside Montenegro, natural persons who do not have the right to vote in Montenegro, anonymous donors, public institutions, legal entities and companies founded and/or majority or partial owner by states or municipalities, trade unions, religious communities and organizations, NGOs, casinos, betting shops and other organizers of games of chance and persons engaged in the

64 See examples from other countries, such as Czech Republic, Ireland, Slovakia, UK.

production, processing and trade of tobacco and the production and trade of tobacco products, which is in line with international good practice.[65]

53. The Final Opinion dealt with the potential use of cryptocurrencies in the financing of political parties and election campaigns,[66] an issue not specifically addressed in the new Law. While the prohibition of anonymous donations may, in practice, preclude the use or receipt of cryptocurrencies that do not allow for the identification of donors and traceability of the persons involved in transactions, a proper consideration should be given in the Law to increasingly complex and indirect financing arrangements, including digital assets, as a core anti-corruption concern.

54. As noted above, Article 33 (1) of the Law prohibits political entities from receiving material and financial assistance from foreign states and other foreign sources. However, no equivalent prohibition appears to apply expressly to presidential candidates. While Article 72 (1), read in conjunction with Article 29 (1), provides for sanctions in relation to the receipt of private funds by presidential candidates outside the election campaign period, the definition of "private sources" in Article 6 does not explicitly address foreign sources. Furthermore, as noted above, the Law remains silent on campaign financing by candidates in elections other than presidential elections, including with respect to permissible sources of contributions.

55. In order to ensure legal clarity, consistency, and effective prevention of circumvention, it is **recommended that the Law explicitly clarify that the restrictions on permissible contributions set out in Article 33 (1) apply equally to all election candidates, including presidential candidates and candidates in parliamentary and local elections**.

RECOMMENDATION E.

To clarify in the Law that the prohibition to receive material and financial assistance from foreign states and other foreign sources applicable to political entities under Article 33 (1) shall apply equally to all election candidates, including presidential candidates and candidates in parliamentary and local elections.

6. TRANSPARENCY OF POLITICAL PARTY AND ELECTION CAMPAIGNS FINANCING

56. Pursuant to Article 24 of the new Law, political entities are required to open a designated bank account no earlier than the day marking the beginning of the election campaign and no later than the day following the confirmation of the electoral list. In this respect, the Final Opinion recalled[67] the recommendation contained in the most recent ODIHR election observation report that monitoring of campaign financing and expenditure should commence from the calling of elections and encompass all forms of campaign activity,

65 See e.g., *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 211, which underlines that "*Limits have historically been placed on funding, in an attempt to limit the ability of particular categories of persons or groups to gain political influence and influence the decision-making process through financial advantages. It is a central characteristic of systems of democratic governance that parties and candidates are accountable to the citizenry at large, not to wealthy special-interest groups in particular. As such, a number of reasonable limitations on funding have been developed. These include limitations on donations from businesses and private organizations, including state-owned/controlled companies and anonymous donors*." See also the CoE *Committee of Ministers Recommendation Rec(2003)4,* which sets criteria for the prohibitions (e.g., Article 5 prohibits legal entities under the control of the state or other public authorities from making donations to political parties, while Article 6 prohibits donations from all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party; Article 7 prohibits or limits donations from foreign donors).

66 See ODIHR, *2024 Final Opinion,* para. 87.

67 See ODIHR, *2024 Final Opinion,* para. 44.

including campaign events, online advertising such as Google Ads, and other relevant digital platforms, to the extent possible. **In order to facilitate comprehensive and timely oversight of campaign financing, it is recommended that political entities be required to open designated campaign bank accounts for the election campaigns immediately upon the calling of elections and no later than the day following the confirmation of the electoral list.** While campaign expenditures may continue to be permitted only from the official start of the campaign period, all private contributions intended for campaign purposes, including transfers from the political party itself, should be required to pass through such designated accounts from the moment they are opened. Such an approach could strengthen transparency, improve the traceability of campaign-related financial flows, and support more effective monitoring by the competent oversight authorities.

57. Moreover, the provisions of the Law on the opening of bank accounts do not clearly regulate situations in which multiple election campaigns are conducted simultaneously. In particular, the 2025 amendments to the election law provide for the concurrent conduct of parliamentary and municipal election campaigns, which raises practical and legal questions regarding the financing and reporting of related expenditures. In this context, the legal framework does not specify how campaign-related costs should be allocated, recorded, and reported when expenses are incurred in parallel for different electoral contests. It remains unclear whether such expenditures should be attributed separately to each campaign account or consolidated within a single framework of reporting. The absence of clear rules in this respect creates legal uncertainty regarding the treatment of shared or overlapping campaign expenses and may complicate the effective oversight of campaign finance compliance.

58. The new Law requires that political parties submit annual financial disclosure reports and explicitly requires that such reports distinguish between revenues originating from public and private sources (Article 52). ODIHR has previously noted that the previous version of the Law did not provide sufficiently detailed rules concerning the format and content of annual financial disclosure reports. and recommended that the Law be supplemented in this respect.[68]. **This recommendation remains outstanding and the Law should be supplemented to clearly and comprehensively define the information to be included in annual reports, including donations received, income generated, loans and outstanding debts, assets and liabilities, and all categories of expenditure, as well as additional reporting requirements concerning sex-disaggregated data on party leadership, membership, candidacies, or other indicators relevant to assessing the participation of women in political life.**[69]

59. Overall, the Law would benefit from greater clarity and consistency with regard to campaign finance reporting obligations. In particular, Article 25 provides that campaign finance reports are to be submitted following the closure of dedicated campaign bank accounts, which must occur within 90 days after election day. However, the provision does not establish a precise deadline for the submission of the report itself, thereby creating legal uncertainty.

60. At the same time, Article 54 separately regulates campaign finance reporting and prescribes submission of reports within 30 days after the elections. The Law does not sufficiently clarify the relationship between the reporting obligations established under

68 See, *inter alia*, the *ODIHR Final Report on Parliamentary Elections in Montenegro*, 30 August 2020, p. 15 and footnote 75.

69 *Ibid*, para. 94, which recommended that the Law be supplemented to clearly and comprehensively define the information to be included in annual reports, including donations received, income generated, loans and outstanding debts, assets and liabilities, and all categories of expenditure; as well as sex-disaggregated information about party leadership, membership, and activities carried to promote the participation of women in public life and related expenditures, among others.

Articles 25 and 54, nor does it clearly distinguish the scope and purpose of the respective reports. While Article 25 may be intended to cover expenditures financed through budgetary subsidies, both provisions appear to require disclosure of all sources of financing and all campaign expenditures. The coexistence of overlapping reporting obligations, combined with different reporting deadlines of 90 and 30 days respectively, may create ambiguity and unnecessary duplication. **Consideration could therefore be given to revising the relevant provisions in order to clarify the distinction between the reports, harmonize the applicable deadlines, and avoid duplicative reporting requirements**.

61. Moreover, in the interest of transparency and timely public disclosure**, consideration could be given to introducing interim campaign finance reporting requirements prior to election day or immediately thereafter, supplemented by final reports within a defined period following the elections**. Such an approach would be consistent with international good practice and previous ODIHR recommendations[70].

62. The new Law does not introduce additional auditing obligations for political parties. At the same time, it retains the obligation of the Agency for Prevention of Corruption to conduct audits of political party accounts at least once every four years (Article 59). While this provision provides a degree of external oversight, **the audit framework should be further strengthened, including through clearer auditing standards and more regular or risk-based review mechanisms, in order to enhance the effectiveness of oversight and public confidence in the integrity of political finance regulation**.

63. The Final Opinion also recommended that the Law specifies the period during which financial reports of political parties and election campaigns should remain publicly accessible on the Agency's website, and that this period should be sufficiently long to enable effective public scrutiny.[71] While the new Law does not require political parties to publish such reports on their own websites, it now expressly requires political parties to retain accounting records and supporting documentation for a period of ten years, whereas no such period had previously been specified (Article 52 (7)). This amendment constitutes a positive development that may facilitate oversight, auditing, and enforcement activities. Moreover, the Final Opinion recommended[72] that the Law expressly assign responsibility to the Agency for ensuring the long-term accessibility of the reporting section of its website, so that published reports remain publicly available for a sufficiently long period, such as five years or more, or preferably on a permanent basis. **This recommendation remains outstanding and should be taken into account in the ongoing development and redesign of the Agency's online publication platform, with a view to strengthening transparency, accountability, institutional memory, and public confidence in the oversight of political finance.**

64. Article 57 (3) of the new Law requires that reports concerning contributions from legal and natural persons during election campaigns be published within seven days of receipt. In this respect, it was previously recommended to enable publication immediately upon receipt, rather than following a seven-day delay, in order to enhance transparency and ensure timely public access to information concerning campaign financing.[73] This recommendation remains outstanding. **The development of standardized, accessible, and machine-searchable reporting formats, which would facilitate public scrutiny**

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70 In this regard, the ODIHR Election Observation Mission Final Report on the 2016 Parliamentary Elections in Montenegro recommended the introduction of interim campaign finance reporting requirements, a recommendation that has not been addressed in the 2025 amendments

71 See ODIHR, *2024 Final Opinion*, . para. 98.

72 *Ibid*, para 98.

73 *Ibid*. para. 97.

and improve the usability and comparability of disclosed financial information, should also be considered.

65. The publication of the identity of individuals and entities making financial and non-monetary contributions to political entities and candidates constitutes an essential element of transparency in political finance. At the same time, such disclosure should be implemented in a manner that appropriately balances transparency requirements with the protection of personal data and privacy rights. This consideration is particularly relevant in light of Montenegro's obligations in the context of its accession to the European Union, including alignment with the General Data Protection Regulation (GDPR).[74] **It is therefore recommended that the Law explicitly provide that the disclosure and publication of donor information be carried out in compliance with applicable data protection standards.**[75]

RECOMMENDATION F.

1. To require political entities to open designated campaign bank accounts for the election campaigns immediately upon the calling of elections and no later than the day following the confirmation of the electoral list.
2. To provide greater details and clear rules on what must be reported annually, including donations received, income generated, loans and outstanding debts, assets and liabilities, and all categories of expenditure, as well as additional reporting requirements concerning sex-disaggregated data on party leadership, membership, candidacies, or other indicators relevant to assessing the participation of women in political life.
3. To strengthen the audit framework further in the Law, including through clearer auditing standards and more regular or risk-based review mechanisms, in order to enhance the effectiveness of oversight and public confidence in the integrity of political finance regulation.
4. To explicitly provide that the disclosure and publication of donor information be carried out in compliance with applicable personal data protection standards.

7. MEDIA ADVERTISING AND POLITICAL ADVERTISING

66. The new Law does not fully address certain problematic practices identified in the Final Opinion with respect to media and political advertising, although these issues may fall more properly within the scope of the legal framework governing the media and advertising.[76] In any case, measures to prevent across-the-board increases in advertising prices during election periods should be introduced in relevant legislation, along with safeguards against potentially unequal access to advertising services despite the existence of formally transparent pricing structures. As recommended in the 2024 Final Opinion, applicable legislation should **require that prices must not be increased during a certain duration prior to the start of the election campaign** and that **airtime offered on private media must be offered to all parties at the same price, while considering legal provisions to limit the amount of political advertising space which a given party**

74 C.f. the referece to the protection of personal data in relation to budget expenditure, Article 41 paragraph 4 of the Law.
75 See also ODIHR, *2024 Final Opinion*, para. 98.
76 *Ibid*, paras 100-104.

or candidate can purchase.[77] Applicable legislation should also clarify the role and responsibilities of the Agency for Electronic Media in overseeing compliance with election-related media and advertising provisions[78].

67. The provisions of the 2025 Law relating to advertising transparency and disclosure would benefit from greater internal harmonization, in particular between Articles 16 and 54. While Article 54 appears to regulate campaign advertising disclosure, Article 16 governs categories of campaign expenditures without expressly addressing online advertising or advertising on social media platforms.

68. In addition, Article 16 imposes obligations on entities providing media advertising services to publish price lists and submit contracts related to campaign services to the Agency for Electronic Media. However, the provision does not clearly define which entities fall within the scope of these obligations, nor does it specify whether and how providers of online advertising services, including social media platforms and digital intermediaries, are covered by the regulation.

69. The absence of clear and harmonized regulation in this area may create legal uncertainty regarding the treatment, disclosure, and oversight of online political advertising and campaign-related digital services. **Consideration could therefore be given to clarifying the scope of entities subject to disclosure obligations, explicitly addressing online and social media advertising within the framework of campaign expenditure regulation, and harmonizing the relevant provisions of the Law to ensure consistency and effective implementation.**

70. Furthermore, the provisions of the 2025 Law relating to political advertising disclosure would need to be aligned and consolidated with the applicable framework established under the Transparency and Targeting of Political Advertising (TTPA) Regulation, similarly to the references made with regard to the GDPR (see para 65 *supra*). **Consideration could therefore be given to assessing the interaction between the domestic legal framework and the TTPA in order to ensure legal coherence and avoid overlapping or conflicting regulatory obligations.**

71. At the same time, a positive development is that the new Law implements the recommendation contained in the Final Opinion requiring campaign expenditure reports to include information on expenditures related to online advertising,[79] including advertising on internet platforms and social media (Article 54 (3)). This amendment may contribute to strengthening transparency in an area of campaigning that is increasing in electoral processes,[80] given the growing significance of online political advertising in Montenegro.

77 *Ibid*, paras 100-104.

78 See *ODIHR Final Report on Early Parliamentary Elections, 11 June 2023* stating that to ensure effective oversight of campaign coverage the Agency for Electronic Media should be mandated to oversee the compliance of broadcast media with election-related provisions and provided with sufficient sanctioning and enforcement powers. See also Recommendation CM/Rec(2022)12 of the Committee of Ministers to member States on electoral communication and media coverage of election campaigns, which contains important standards concerning transparency of political advertising, disclosure of sponsors and funding sources, equal opportunities in electoral communication, online campaigning, and the responsibilities of various actors involved in disseminating electoral messages.

79 *Ibid*, para 104.

80 See *Montenegro - Early Parliamentary Elections, 11 June 2023 - ODIHR Election Observation Mission Final Report*, p. 17. See also Article 7.3 of the UN Convention Against Corruption. See UNCAC Conference of the States Parties (CoSP), *Resolution 11/7 on Preventing and Combating Corruption through Enhancing Transparency in the Funding of Political Parties, Candidatures for Elected Public Office, and Electoral Campaigns*, December 2025, operative paragraph 10.

8. SUPERVISORY AUTHORITY

72. The Agency for Prevention of Corruption plays a central role in ensuring the effective implementation and enforcement of the Law. In this respect Article 11 of the Law provides that the Agency is to be established and regulated by a separate law.

73. As indicated in the Joint Guidelines, the appropriate structure and independent membership of oversight bodies, as well as the ability to investigate and pursue potential violations, is integral to the effectiveness of regulation.[81]

74. ODIHR has previously observed that the Agency does not appear to possess full investigative authority or direct access to certain relevant databases necessary for carrying out its oversight functions effectively. Article 60 of the new Law states that the procedure to decide whether there is a violation of the Law and to impose measures in accordance with this Law shall be initiated by the Agency and conducted through its "authorised officer". Article 61 of the Law mentions that "*the authorized officer is obliged, ex officio, to obtain data and information on facts necessary for conducting the procedure and making decisions, the records of which, in accordance with the law, are kept by the competent state authorities, state administration bodies, local administration bodies and local selfgovernment bodies, or companies, institutions or other legal or natural persons*". At the same time, the new Law does not further clarify or strengthen the investigative powers of the Agency in cases where there has been an indication of wrongdoing by an individual party, leaving uncertainty as to whether other state institutions and bodies are under a clear obligation to provide the Agency with full access to records and information necessary for the effective performance of its investigative powers.[82]

75. **It is therefore recommended that the Agency be granted enhanced investigative powers, including direct access to relevant databases and records, in order to enable comprehensive and effective supervision of political party and campaign financing**.

76. The Final Opinion also recommended[83] that the Law provide for more frequent audits of political party accounts by the State Audit Institution, while also allowing for differentiated oversight by exempting political parties below a certain income threshold from regular auditing, thereby enabling supervisory efforts to focus on more financially significant political actors. The new Law partially addresses this recommendation by introducing a threshold below which political parties would ordinarily not be subject to such scrutiny (Article 59). However, it does not increase the frequency of mandatory audits.

77. At the same time, concerns expressed in the Final Opinion regarding the adequacy of procedural safeguards and the availability of sufficient time and mechanisms for effective legal remedy remain unaddressed.[84]

78. Furthermore, it was noted before that 15-day deadline provided for state bodies, legal entities, and natural persons to submit information requested by the Agency may be

81 See *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, paras. 268 and 270. Therefore, it is important to specify these elements as part of regulatory efforts: "*In order to ensure transparency and to increase their independence, legislation shall specifically define how relevant state oversight bodies are appointed. Overall, such bodies function best if appointments are made on a staggered basis and separate from the electoral cycle. In addition, it is generally good practice for the competent officials conducting financial oversight to be appointed for a single term free from political influence. The law shall set out clear criteria not only for the appointment of members of such bodies, but also for their dismissal"* (para. 270) and *"Generally, legislation should grant oversight agencies the ability to investigate and pursue potential violations. Without such investigative powers, agencies are unlikely to have the ability to effectively implement their mandate. Adequate financing and resources are also necessary to ensure the proper functioning and operation of the oversight body"* (para. 268).

82 See *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, paras. 268-269.

83 See ODIHR, *2024 Final Opinion*, para. 106.

84 *Ibid*. para. 110.

excessively long and could hinder the timely detection, investigation, and resolution of potential violations or irregularities.[85] This deadline has been retained in Article 61 of the adopted Law. It is recommended **to consider shortening this timeframe in order to facilitate more effective and timely oversight of political financing**.

RECOMMENDATION G.

1. To grant the Agency for Prevention of Corruption enhanced investigative powers, including direct access to necessary databases to effectively carry out its investigative functions in cases where there has been an indication of wrongdoing by an individual party, and thereby effectively oversee political party and campaign finance.
2. To supplement the Law by providing political entities with clear and robust procedural safeguards to contest the decisions of the Agency within a reasonable timeframe.
3. To shorten the timeframe under Article 61 of the Law for state bodies, legal entities, and natural persons to submit information requested by the Agency in order to facilitate more timely and effective oversight and enforcement of political finance regulations.

9. PENAL PROVISIONS

79. The relevant provisions concerning sanctions in the new Law remain largely unchanged (Articles 67-73).[86]

80. Moreover, the Law foresees a number of potential violations for which no corresponding sanctioning provisions are provided.[87] This may significantly weaken the enforceability of these provisions and, in practice, render them ineffective.

85 *Ibid.* para. 109.

86 The *2024 Final Opinion* recommends that the sanctioning framework be further refined to enhance proportionality beyond the existing tiered penalty structure, including by providing clearer guidance on the criteria to be taken into account when determining the level of fines within a given range, such as the frequency, severity, and scale of the violation (*2024 Final Opinion*, para. 114). It further recommends that the Agency for Prevention of Corruption be empowered to impose lower-level administrative fines directly, rather than requiring that all sanctioning procedures under the Law be initiated by the Agency and subsequently adjudicated by a misdemeanour court, which may introduce procedural complexity and delay (*2024 Final Opinion*, para. 116). Moreover, ODIHR has previously recommended (*2024 Final Opinion*, para. 115) that the Agency for Prevention of Corruption be mandated to develop and publish detailed guidelines establishing clear criteria for determining the level of fines, in order to ensure consistency, predictability, and proportionality in their application.

87 Such gaps include, *inter alia*: receiving loans from entities other than banks or licensed financial institutions in Montenegro (e.g. companies or foreign banks), as referred to in Article 6 (cf. the sanction applicable to loans from natural persons in Article 69 (37)); circumvention of public funding limits, whereby a political entity eligible for public funding under Article 13 receives private funds exceeding 100 per cent of the allocated public funding amount (Article 15 (1)); cf. Article 69.6 addressing political entities not eligible for public funding exceeding prescribed limits under Article 15 (2)); misuse of funds allocated to women's organisations within political entities, including their use for purposes other than those foreseen under Article 14 (6) or contrary to the statutes of such organisations; exceeding campaign donation limits, including donations by natural persons above EUR 2,500 or by legal entities above EUR 5,000 in elections for deputies or councillors (Article 23 (3)), noting inconsistencies with related sanctioning provisions in Articles 67 and 73; failure of presidential candidates to transfer unused campaign funds to the State Budget upon closure of the designated bank account (Article 31 (3)); donations from ineligible entities, including legal entities, companies and entrepreneurs that have concluded public contracts or performed public interest tasks within the relevant cooling-off period (Article 33 (5)), where sanctions do not appear to fully cover all categories of prohibited donors; use of intermediaries for making or receiving contributions (Article 34 (2)), where sanctioning provisions do not consistently cover all actors involved, in particular natural persons acting as intermediaries; prohibition on exerting pressure in relation to fundraising and campaign financing activities (Article 35), where sanctions do not cover all categories of potential perpetrators, notably political entities; distribution of campaign material and collection of support signatures in public institutions and in state- or municipally owned entities (Article 36 (2)); use of official vehicles by public officials during election campaigns outside strictly defined exceptions (Article 43 (1)-(2)); engagement of persons under fixed-term or temporary service contracts in public entities during election periods (Article 44 (2)); acts or measures that may result in unequal treatment of electoral contestants (Article 48), where the absence of a clear sanction may undermine enforceability; third-party campaigning by legally related entities, foreign entities,

81. **In order to ensure the effectiveness of the regulatory framework, sanctions should be envisaged for all substantive obligations established under the Law. This may be achieved either by extending the existing catalogue of offences under Articles 67-73 or, alternatively, by introducing a general sanctioning clause covering all violations not explicitly subject to specific penalty provisions.**

82. In this respect, Article 64 (3) provides that the Agency may fully or partially withhold the transfer of budgetary funds to a political entity in cases of "*violations of provisions of this Law pertaining to election campaign financing*". This broadly formulated provision may raise concerns regarding legal certainty and consistency of application, particularly given the significant financial impact of such a measure and the associated risk of perceptions of arbitrariness or unequal treatment in its enforcement. It is further noted that, pursuant to Article 20 of the Law, 30 per cent of public funding is allocated prior to elections, while 70 per cent is disbursed after elections. **It is therefore recommended that the Law set out clear and precise criteria governing the conditions, scope, and procedural safeguards for the suspension or withholding of public funds in cases of violations of campaign financing rules.**

83. Moreover, **given the potentially significant consequences that the withdrawal of public funding may have both for individual political parties and for the functioning of the multiparty system more broadly, the Law should clearly specify that such measures are to be applied only in cases of serious or repeated violations and in accordance with the principles of proportionality and legal certainty**.

84. The Law contains certain inconsistencies regarding the alignment between substantive obligations and corresponding sanctioning provisions. In particular, Articles 30 and 31 impose obligations on presidential candidates concerning the opening and closure of a dedicated campaign bank account. However, not all related obligations appear to be consistently covered by dedicated sanctions for presidential candidates (Article 72 (2)), while other relevant provisions are addressed under sanctioning rules applicable to political entities (Article 69 (27)-(31), (33)-(35)). Although presidential candidates are included in the definition of "political entities" under Article 2 (1), this approach may create ambiguity as to the applicable enforcement regime and the allocation of responsibility between categories of regulated actors.

85. A similar issue arises in relation to Article 29 (2), which establishes a limit on the total amount of private funds that presidential candidates may raise. This provision does not appear to be explicitly covered by the sanctioning regime applicable to presidential candidates under Article 72. While Article 69 (32) addresses violations of this rule, it does so within the framework of sanctions applicable to political entities. In light of the structural distinction between provisions governing presidential candidates and those governing political entities, this may create legal uncertainty and should be clarified to ensure coherence in enforcement practice.

86. With regard to Article 8 (7) of the Law, which prohibits the use of budgetary funds for the personal benefit of candidates of political entities, the Law provides for different sanctioning ranges under Articles 68 (2) and 69 (5), namely EUR 5,000-20,000 and EUR 10,000-20,000 respectively. This duplication and inconsistency in applicable penalties may lead to uncertainty in enforcement and inconsistent application of sanctions. It is therefore recommended that **the Law be revised to retain a single, coherent sanctioning provision.**

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or natural persons, including potential circumvention of donation restrictions (Article 49 (2)-(4)); exceeding expenditure limits applicable to third-party campaigning (Article 49 (7)); receipt of third-party donations outside the designated bank account (Article 50 (3)); failure by political entities to maintain accounting records and supporting documentation for the required period (Article 50 (7)); failure to publish annual work programmes and financial plans on official websites (Article 53 (3)).

87. Likewise, inconsistencies are observed in relation to violations of Article 30 (5), which regulates campaign expenditure limits for presidential candidates. These violations are subject to sanctions under both Article 69 (32) (political entities) and Article 72 (2) (presidential candidates). Given the overlapping classification of presidential candidates as political entities under Article 2 (1), it remains unclear which sanctioning regime is intended to apply in practice. This ambiguity should be clarified in order to avoid duplication, ensure legal certainty, and prevent potential inconsistencies in enforcement.

88. Finally, ODIHR reiterates its recommendation from the Final Opinion[88] **to consider introducing indexation mechanisms for fines so as to preserve their deterrent effect over time and prevent erosion of their value due to inflation.**

RECOMMENDATION H.

1. To ensure the effectiveness of the regulatory framework by providing sanctions for all substantive obligations, either through an expanded catalogue of specific offences under Articles 67-73 of the Law or through the introduction of a general sanctioning clause covering all violations not explicitly subject to specific penalties.
2. To set out clear and precise criteria governing the conditions, scope, and procedural safeguards for the suspension or withholding of public funds in cases of violations of campaign financing rules, ensuring that such measures are to be applied only in cases of serious or repeated violations and in accordance with the principles of proportionality and legal certainty.
3. To consider introducing indexation mechanisms for fines so as to preserve their deterrent effect over time.

[END OF TEXT]

88 See ODIHR, *2024 Final Opinion*, para. 115.