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Report

CORRUPTION IN MONTENEGRO

- The Enabling Environment for
Sustainable Enterprises in Montenegro-



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Purpose of the document

This document is based on Montenegrin Employers Federation strategic documents – a report *The Enabling Environment for Sustainable Enterprises and 5 business killers* (2013), as well as thematic research through focus groups discussion carried out by MEF and the author of this report in 2016. Based on the analysis of identified weaknesses and using a precise methodology developed by International Labour Organization (ILO), the main purpose of the document is to provide an overview of the existing situation in terms of problems, policies, and institutional framework, and to offer recommendations for improvement of the overall environment for sustainable enterprises in Montenegro through separate thematic chapters within the report.

Executive Summary

Corruption is a social problem that has existed since the ancient times, that eats up the society inside at different levels and as such represents a significant obstacle to business development and business operations. It is present in all modern societies, but to adequately fight corruption in Montenegro one has to understand Montenegrin socio-political context that is characterised by communism heritage, a long period of transition to democracy as well as the process of democratic consolidation of institutions which has not yet been finalised. In Montenegro corruption is present at the level that is worrying and expanded to the extent that it creates negative patterns of everyday life relationships, while some types of corruption seriously affect business sector and economic outcomes so they may become a serious impediment to private and foreign investments and the overall development of trade and economy. Corruption as such jeopardises the most diverse of societal relations, public and private activities, decision making on public procurement and tenders, payments of taxes, customs and other duties, assignment of rights, licences and privileges, employment and health services provision, that the unscrupulous officer sells to those who do not have a right to or advantage over them, instead of providing them free of charge to those entitled to or having an advantage over them.

Economic effects are numerous: corruption hinders safe and rational investments, both foreign and domestic; it slows down and disables the development and limits trade; it leads to irrational and uneconomical use of public funds; it encourages “grey” economy and reduces tax sources. At macroeconomic level, corruption leads to losses of public, state i.e. budgetary

money through high expenditures (expensive concessions, expensive equipment, irrational and excessive imports) as well as through easy borrowing at the expense of future generations.

It should be highlighted that all countries in transition, such as Montenegro, at the very beginning of their journey to democracy face three equally aggravating circumstances: firstly, corruption was very much present in the time of communism and ex state; secondly, the adoption of new laws is an opportunity for the “intrusion” of deficient and unjust laws that are the result of corruption or are liable to corruption and thirdly, denationalisation and privatisation in unsettled conditions are a constant threat to corruptive activities that are hardly proven and are usually symbolised by harmful privatisation contracts.

Concrete conclusions that came out from the survey based on focus group discussion organised in cooperation with Montenegrin Employers Federation (MEF), indicate that, according to employers, the trend of European integrations is a useful process that has signified intensive reforms, but the practical impact of measures and policies has not yet been felt. Employers think the very often another significant cause of corruption are complex legislation that regulates business operations. According to them, general conditions are better than before, and their colleagues and they are readier than before to report corruption. However, the intensity of such actions has not been satisfactory. Surveys reveal that corruption is perceived as one of the key reasons of bad economic situation of the society but employers are not ready enough to actively engage in the fight against corruption at least not to the extent necessary. The reason for the above is found in their insufficient knowledge about procedures and possibilities of reporting this type of actions but also in distrust in institutions and their capacities to adequately treat such reports. For all said, there is an evidence of employers’ readiness to consciously engage in corruptive actions, perceiving them as socially acceptable.

Recognising progress when it comes to improvement of business environment in Montenegro, some traditional sources of corruption are recognised as highly burdensome to business sector. Those sources are: corruption in the process of obtaining work licences, corruption in construction, corruption in public procurement and other areas such as customs services, inspections etc.

Regardless the great number of institutions that are naturally engaged in fighting corruption it is evident that Montenegro has to strengthen its overall capacities so that it may properly implement the adopted legislation and work on successful institutional coordination. The key recommendations of *5 Business Killers* are given in this document through recommendations given into several strategic directions towards: restoration of trust in institutions of the system, enabling more intensive public dialogue, strengthening and establishing legal and moral responsibilities, and strengthening the ethics and ethical investments.

1. INTRODUCTION

Corruption is an ancient disorder dating back to the very first forms of organised societies, i.e. when the first individual managed to achieve personal gain from something he/she had no right to, contrary to established rules.

Thus, corruption has been present in society from the ancient times. Despite that fact, the society has always denied the existence of corruption and corruptive practice in general. Corruption usually appears interlinked with greed that is a precondition for one’s affinity

toward corruptive practices. However, greed is not the only reason for the emergence and survival of corruption. Corruption is also related, for example, to great social differentiations (especially in case of public servants poverty); disintegration and transformation of political and economic systems, which is particularly related to the state of ex socialist countries; war and post-war period, the change of political leaders and high state officers etc.

Globalisation and global transition that every society in the world goes through set grounds for corruptive practice all over the globe. So, this is not related only to transition countries (i.e. ex-socialist countries) leading us to conclusion that corruption is a global problem.

Corruption, as socially negative phenomenon, was defined even in Roman law. The criminal act of corruption was defined as giving, receiving or searching for gain with an intention to influence the officer in regards to its work. Philosophers like Aristotle, Machiavelli and Montesquieu¹ stated that corruption was the symbol of societal moral values bleeding. It is the reason why corruption is considered immoral and harmful social phenomenon, since the holders of social functions has to advocate for joint and not their own private interest. With the development of modern states, corruption is not understood only as morally harmful but also as the cause of state's inefficiency. The most significant forms of corruption are giving and receiving bribe, nepotism – misuse of function/position for private purposes.

So, corruption is a phenomenon where a person who has the authority and powers is induced to act beyond its rights, responsibilities and duties in a way he/she is promised or offered money or other benefits. The Criminal Law treats such criminal acts as criminal acts against official duty. Those are: the abuse of official position and powers, a fraud, a deceit in services provision, receiving bribe, giving bribe, unlawful mediation, an unscrupulous performance of duties, disclosure of official secrets etc.²

Corruption exists both in the area of public activities i.e. those related to state and its institutions and in private sphere where the state is not one of the parties e.g. in manufacturing and services, in trade, sports, show business, art etc. However, the most important is that in the case of "public corruption" we have a situation where a public servant, a chosen official (a Parliament member, a public official) or an appointed minister, has unlawful ownership over rights, powers and resources that are not their own but public i.e. state-owned. "Unlawful" means not in the public, general but private i.e. narrow interest and not according to the law but for a bribe. It is because those two terms are correlated, that an often heard expression in public is "bribery and corruption".

Corruption as such jeopardises the most diverse of societal relations, public and private activities, decision making on public procurement and tenders, payments of taxes, customs and other duties, assignment of rights, licences and privileges, employment and health services provision, that the unscrupulous officer sells to those who do not have a right to or advantage over them, instead of providing them free of charge to those entitled to or having an advantage over them. Instead of acting in general interest, in accordance with laws and regulations that should be in line with moral principles, such public servants "sell" for personal gain what they are not allowed to, disregarding laws and regulations. Every corruptive activity includes at least two parties – dishonest public servant and unscrupulous citizen. Corruption therefore brings together two sides – the one that bribes and the other that is bribed.

¹Pusic, E., Societal Regulation, Limits of Science and Experiences, Zagreb, Globus, 1989

²Criminal Law of Montenegro, Official Gazette of the Republic of Montenegro, no. 32/11 from 01/07/2011

The simplest and the most accepted definition of corruption is provided by international organisation Transparency International: “Corruption is the abuse of trusted powers for personal gain”.³ This definition is accepted by the greatest international financial institution – the World Bank: “Corruption is the abuse of public service for personal gain”.⁴

So, corruption is every sort of bribery by giving money, any other valuable, or service with an aim to:

- Get something beyond law e.g. a company in the process of privatisation, a building, a construction land, monopoly, a commercial area, a building permit, a credit or a loan beyond specified conditions, money from the state budget, a job at the tender, election votes, a victory at the sports competition etc.
- Complete something out of turn and without complying with necessary terms and conditions, such as register a business, get a job, enrol to the faculty, pass the exam, get a grade, diploma or a bed in the hospital, earn the right to pension and disability benefits etc.
- Get entitlements to different groundless exemptions from, for example, paying taxes, customs, fines etc. but also to have competent authorities “close their eyes” before murders, violence, frauds, kidnappings, drugs, prostitution or smuggling that occur as consequences of corruption.

2. BRIEF HISTORICAL OVERVIEW OF THE PROBLEM

In modern states corruption is a danger because it hinders social activities, loosens morals, blocks state administration and makes the judiciary system inefficient. Long-lasting economic and political crisis and poverty as a prevailing social condition that have special effect on transition countries such as Montenegro are significant risk factors enabling corruption. Effective opposition to corruption, one of the most dangerous national and global phenomena, requires integrated efforts and activities of both government and citizens, as well as of each segment of public life. Especially important is the role of public in combating this phenomenon and establishment of democratic values.

Corruption in the form of bribe given to the persons, who abuse their powers in public and private sector, is increasing all over the globe. Special problems arise in transition countries due to abuses by public servants, nepotism, assimilation of funds, permits machination etc. in public sector corruption is manifested through giving preference to certain jobs and deals. A special sort of corruption is related to organised crime that is dependent on corruption and cannot develop without it. The major problem in fighting corruption is a lack of experts that would detect and reveal corruptive activities. Corruptive activities are beneficial for both parties – the one that seems to give certain financial sources and the other that receives them; it is the reason why no one will report corruption. The damage is not made to the concrete person that would report corruption but to the state and the entire society that do not even have direct knowledge about the corruption. It is the reason why a lot of efforts should be put towards prevention and repressive actions.

³Transparency International, <http://www.transparency.org>

⁴The World Bank Department for Poverty Reduction and Economic Governance, *Helping Countries Combat Corruption*, Washington, DC, September 1997

When it comes to Montenegrin socio-political reality the fact is that small-scale corruption remains the evident problem that to a great extent affects creation of unhealthy relationship patterns between citizens, employers and public officials – imposing them as normal, needed and almost socially acceptable, which is one of the key malignity of the entire social tissue that requires treatment on different levels. Beside negative impact of such patterns on the average citizen and his/her household, certain forms of corruption have additional serious consequences on business sector and economic outcomes threatening to become a serious obstacle to private and foreign investments and the overall development of trade and economy.

As indicated in numerous surveys, corruption is at the top of the list of problems affecting the quality of life. According to recent findings of De Facto and Centre for Democratic Transition, corruption is marked as the third major social problem⁵ in all its manifestations, starting from so called “petty” criminal, over large-scale organised crime at international level, to bad privatisations, corporate crime etc. Based on that, one can conclude that the very corruption is one of the major problems that generate poor economic state of citizens and poverty.

The causes of corruption vary from country to country. They derive from local surroundings and time frame, governance tradition, historical and political development of the country. Nevertheless, there should be highlighted that all transition countries, such as Montenegro, at the very beginning of their journey to democracy face three equally aggravating circumstances: firstly, corruption was very much present in the time of communism and ex state; secondly, the adoption of new laws is an opportunity for the “intrusion” of deficient and unjust laws that are the result of corruption or are liable to corruption and thirdly, denationalisation and privatisation in unsettled conditions are a constant threat to corruptive activities that are hardly proven and are usually symbolised by harmful privatisation contracts. The effects of corruption are very diverse, but can be classified into three basic groups such as: political, economic and social.

Economic effects are numerous: corruption hinders safe and rational investments, both foreign and domestic; it slows down and disables the development and limits trade; it leads to irrational and uneconomical use of public funds; it encourages “grey” economy and reduces tax sources. At macroeconomic level, corruption leads to losses of public, state i.e. budgetary money through high expenditures (expensive concessions, expensive equipment, irrational and excessive imports) as well as through easy borrowing at the expense of future generations. One of significant effects of public servants corruption is reflected in the fact that both citizens and companies evade regular payment of taxes, contributions and other obligations to the state.

In post-socialist countries especially those with a longer transition period such as the case with Montenegro, the level of trust into institutions and organisations as initiators of positive changes and support to individuals in dealing with numerous problems faced by society is very low. There is a consensus of viewpoints that institutions are the most responsible for finding solutions to the problems, that the part of responsibility is certainly on international community but one should certainly not forget the role of citizens and companies in this regard. Particular problem is the inertness of citizens and employers that invest no or little efforts in reducing the level of corruption in society, understanding different types of corruption as

⁵ <http://www.cdtmn.org/2016/04/14/svaki-peti-gradanin-dao-mito/>

socially acceptable behaviour and agreeing to it⁶. “A small token of attention” is considered part of tradition, inherited from the previous system, not at all malign or dangerous but to the great extent the sign of gratitude, general culture and respect of profession that nowadays is degraded. It is how citizens justify the corruptive actions they took.

The widespread is the corruption between public servants and private employers and the simplest form of this sort of corruption is the bribery of public servants. If corruptive practice spreads over institution, the integrity of that institution will be questioned. If such practice is characterised for more institutions then we can talk about endemic corruption within public institutions. It appears as abuse and adjustment of tender bids (false value demonstration, unreal prices of services usually far lower than market) as well as the abuse of contracts, violation of business customs and practice.

Corruptive relationships between private sector and politics are another widespread phenomenon in the world. Business people are motivated by their sector’s profitability, while politicians want to preserve their power. Interestingly, the roles of these two parties are often changed, especially after the expiry of their mandates. The most typical example of corruptive action in this regard is bribery in favour of political parties. There are frequent examples of illegal investments in some economic sectors whereby the relationship between private sector and politicians is reflected in politician’s public justification of such actions.

3. ANTICORRUPTION INFRASTRUCTURE AND FIGHT AGAINST CORRUPTION IN BUSINESS

Montenegro started to intensely fight corruption in 2000. Namely, in February that year, together with other countries from the region, Montenegro signed the Agreement and the Action Plan of the Stability Pact Anticorruption Initiative for South-east Europe (SPA). After joining the Stability Pact Anticorruption Initiative in early 2001, Montenegro established the Agency for Anticorruption Initiative (that later changed its name into the Directorate for Anticorruption Initiative) – the first public authority with its competence was committed to marketing-preventive actions against corruption as well as to coordination of a series of activities related to harmonisation of national legislation to international anticorruption standards.

Numerous reports say that the fight against corruption in Montenegro has taken place in two phases.⁷ The first phase covers the period from 2000 (when Montenegro joined the Stability Pact Anticorruption Initiative) to adoption of Fight against Corruption and Organised Crime Programme in 2005. It was the phase of establishment of relevant institutions, creation and adoption of the initial laws that made a framework for fight against corruption. The second phase meant intensive activities related to fight against corruption whereby the Government adopted the Fight against Corruption and Organised Crime Programme in 2005 followed by the Action Plan for Implementation of the Fight against Corruption and Organised Crime Programme in 2006.

⁶*Judges, Lawyers and Business Sector Representatives Opinions on Corruption*, the Centre for Democracy and Human Rights (CEDEM), Podgorica, 2013

⁷*The Programme of Fight against Organised Crime and Corruption*, the Ministry of Interior Affairs of Montenegro, 2015

Intensive process of Montenegro's integration to European Union in recent years meant intensive regulation of institutional-legal framework for fight against corruption but also a raised awareness about the need for more intensive fight against corruption at all levels. After regaining the independence and legal status, Montenegrin governments clearly committed to work on c corruption and took initial steps in that direction. Important instruments for improvement of legislative framework for fight against corruption were set with ratification of the Criminal Law Convention on Corruption (from 2002) and Civil Law Convention on Corruption (from 2008).

In February 2007, a National Commission for Fight against Corruption and Organised Crime was founded which, for the first time, was made of representatives of all three branches of government, civil society and media. Additionally, in May 2008 an Innovated Action Plan for the period 2008-2009 was adopted. For the purpose of reporting and creating a single methodology of statistical indicators in the area of organised crime and corruption, a Tripartite Commission was founded, comprised of representatives of courts, prosecutor's office and police.

Montenegro acceded to the UN Convention on Fight against Corruption (UNCAC) in 2006. The Convention does not provide the definition of corruption itself but it lists the series of different behaviours that the Convention member states have to criminalise and consider criminalising (such as active and passive bribery of national state officials, active or passive bribery of foreign state officials, influence peddling, abuse of position and unjust enrichment). Moreover, the Convention explicitly requires and encourages criminalisation of corruption in private sector (such as active or passive bribery in private sector, private sector property fraud, money laundering), which is particularly directed towards fight against corruption in business sector.

Since June 2006 Montenegro has been a full member of GRECO (the Council of Europe's Group of States against Corruption) that monitors the implementation of the Council of Europe's conventions on fight against corruption.

The Parliament of Montenegro adopted a Resolution on Fight against Corruption and Organised Crime (Official Gazette of Montenegro, no. 02/08) expressing readiness to, inter alia, engage all its capacities to build national anticorruption legislation and to establish the closest possible international and regional cooperation in the area of corruption and organised crime prevention. In parallel and in accordance to responsibilities taken at the Regional Conference of South-East Europe, GOPAK (the Global Organisation of Parliamentarians against Corruption), it committed to found a national branch of Parliamentarians of Montenegro against Corruption, where representatives of all parliamentary working bodies would take part in.

The Government of Montenegro made a decision that for the period 2010-2014 a Strategy for Fight against Organised Crime and Corruption is created followed by an Action Plan for its implementation. The Strategy was adopted once its Draft was established and public discussion was carried out⁸. The National Strategy for Fight against Organised Crime and Corruption defines: strategic directions, principles and goals of fight against corruption and organised crime, priority measures in the frame of establishing efficient system of fight against corruption and organised crime in public, private and civil sector, the role and responsibility of all actors which is the basis for efficient development of a sustainable system of monitoring and evaluation of the overall national response to threats posed by corruption and organised crime.

⁸Strategy for Fight against Organised Crime and Corruption 2010-2014, the Ministry of Internal Affairs and Public Administration, Podgorica, 2010

The Strategy set a frame for the Action Plan for 2010-2012, followed by another one for 2013-2014, that determined goals, measures, actors and dynamic of their accomplishment in the Strategy implementation.

This Strategy provided a functional link with earlier adopted strategies related to: fight against trafficking, integrated border management, illicit drug trafficking and fight against illegal migration). It followed the relevant international standards especially in regards with corruption and organised crime (UN and the Council of Europe's conventions), as well as other international instruments in this area, including the EU law ("acquis communautaire").

Montenegrin National Strategy for Fight against Corruption for 2010-2014 with the accompanying Action Plan for 2013-2014 expired by the end of 2014. According to final report on the degree of the Action Plan realisation, 59 per cent of measures was realised, 30 per cent of measures was realised only partially while 11 per cent of measures was not realised. In order to avoid duplication with an Action Plan for Chapter 23, there would be no new strategy and action plan for the time being. The measures from the Strategy and the related Action Plan that were not realised until 2014 will be included in the annex to the Action Plan for Chapter 23 and monitored through the mechanism set for Chapter 23⁹.

In December 2014 the Parliament of Montenegro adopted a comprehensive set of laws for prevention of corruption. The set includes: a Law on Prevention of Corruption (which was a legal base for the Agency for Fight against Corruption); a new Law on Lobbying; a new Law on Financing of Political Parties and Election Campaigns, amendments to the Law on Prevention of the Conflict of Interest; amendments to the Law on Public Procurement; and a new Law on General Administrative Procedure. The Parliament also adopted an Ethical Codex for their members. New laws and amendments significantly strengthen the legislation framework in this area.¹⁰

With the amendments to the Law on Prevention of the Conflict of Interests the competent Commission became authorised for investigating inexplicably acquired wealth. The amendment affected the increase in the number of violation penalties and the amount of pecuniary penalties. However, it seems that the scope of the penalties is not sufficient to prevent all violations. According to new amendments the Commission has access to information in possession of banks and other financial institutions but exclusively upon permission by the public official.

The main novelties introduced by the new Law on Lobbying include establishment of public registry of lobbyists and require public authorities publish the contacts they have with lobbyists.

The amendments to the Law on Public Procurement are aimed at tightening the rules on prevention of the conflicts of interests and reducing the risk from corruption. The Inspection service is made competent for the control of implementation of awarded contracts. The amendments to the Law on Criminal Procedure were adopted in June 2015. They introduced more rigid mechanism for review of prosecutorial decisions referring to dismissal of criminal charges. A new Law on Property Confiscation was adopted in September 2015. Montenegro decided not to follow the recommendation from the Article 20 of UN Fight against Corruption Convention i.e. to criminalise the inexplicable wealth.

⁹ Montenegro Progress Report 2015, European Commission, 2015

¹⁰ <http://www.skupstina.me/index.php/me/sjednice/zakoni-i-drugi-akti>

4. CORRUPTION AND BRIBERY IN BUSINESS – Practical Analysis of Actions

Business entity management is essentially the private sector activity oriented towards clients and buyers. However, commercial activities are also linked to the network of public services, administrative responsibilities and preconditions (such as tax inspections and customs clearance) that require frequent cooperation with public administration. Some of these activities (such as tax applications submission) are indirect while others are carried out through direct interaction with public servants (in the case of the health system, labour or tax inspection, public procedures or submission of request for construction permit).

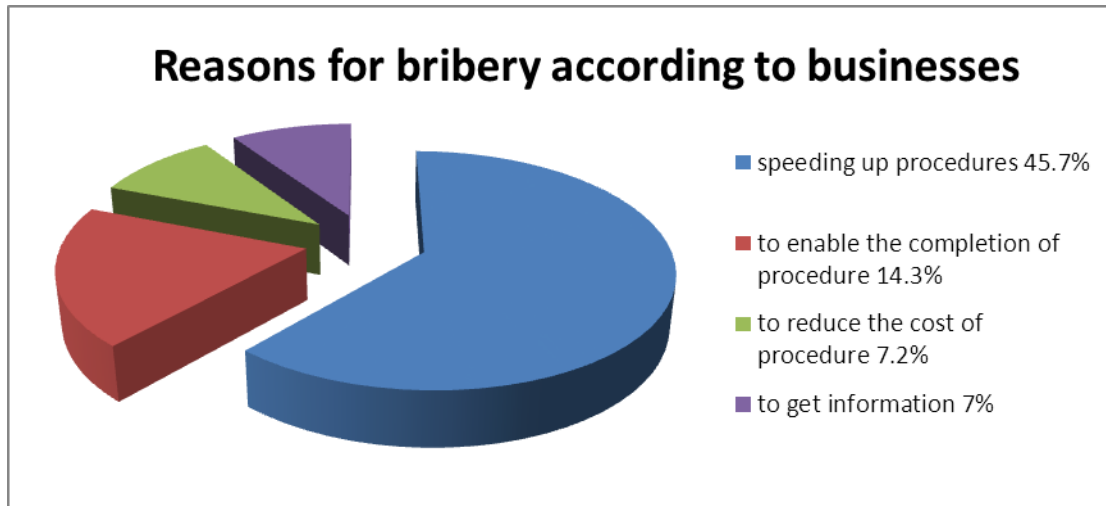
The most of interactions with public servants respect the rules and laws applied in certain administrative procedures. However, every direct interaction brings a possibility of manipulating the rules in exchange for personal gain that result from illegal transaction between private sector and service user on one and public servant on the other side. The acceptance of money, a gift or any other favour-service – beside (or instead) mandatory official fee – for public servant personal gain, represent the act of administrative bribery. As revealed by findings, such cases still play a role in private sector interaction with public sector in Montenegro. Direct interaction between company representative and public servant is a prerequisite for bribery (including bribery through mediator) so the share of bribery is calculated as the number of companies that gave money or a gift to public servant.

4.1. Why Bribery

Bribery of public servants may have different purposes. Public servants can extort a bribe for legal public service that otherwise they would refuse to provide to the client and postpone it for an indefinite time. On the other hand, bribe may be given upon the initiative of the company with an intention to influence regulatory decisions, tax estimates, and public procurement procedures or, among other things, public services provision. For each of these administrative procedures, the purpose of bribery may differentiate depending on the nature of the process or decision that is liable to manipulation. For example, the aim of the bribery may be to change the negative decision regarding the construction permit completing in such way the administrative procedure in the interest of the company. In business world bribery may be significant for speeding up various, usually long-lasting and lengthy procedures, such as getting utility connections (electricity, water), customs clearance of goods, obtaining certain types of permissions for manufacturing process or speeding up health and safety inspections in company's premises by getting the information about the visit in advance. Although speeding up the administrative procedures does not seem a bad idea, if procedures are made faster only for the company that offered bribe, the preferential treatment of that company creates unfair competition and threatens the economy. On the other hand, sometimes public servants are not aware of the purpose of the bribe they receive; as when company representatives use gifts to attract public servants for future interactions making a dependant relationship between public servants and those that gives bribe.

From the companies' perspective, the most important purpose of bribery in Montenegro is to "speed up the procedures" (45.7 per cent) that otherwise would be delayed.

Other listed reasons are: “to enable the completion of procedure” (14.3 per cent), “to reduce the cost of procedure” (7.2 per cent) and “to get information” (7 per cent). At the same time, one in eight bribes (12 per cent) is given for no concrete direct interest for the company that offer bribe but assuming that these “sweets” given to public servants will encourage them to act in favour of the company in the future¹¹.



Graph 1

4.2. What are Ways of Giving or Receiving Bribe?

Data on how to ask for bribe can provide a significant insight into how actually the bribery of public servants by companies takes place. Bribe payment mechanisms are often characterised by certain implicit patterns that are very well known to those that give or receive bribe but are also based on understanding the illegal advantages for both parties. This is even truer for business entities that use bribe to avoid laws and regulations and to speed up administrative procedures or evade dealing with bureaucracy satisfying thereby a huge personal interest. In economy, where every comparative advantage can lead to greater profits and greater market share for business, this can escalate to a situation where bribe is not only expected but is offered “voluntarily” by the business entities so that they make an advantage over their competitors. When giving bribe become a routine for certain companies with an aim to ensure their interests and unauthorised service from public servants, payments may be expected or made more often.

A major problem is that very often public servants do not hesitate to ask for or accept bribe, both from business entities or households. If those who receive bribe do not expect that such activities will be reported or sanctioned, bribery can become the acceptable and usual practice in some state offices. In such cases, public servants that receive bribe have to be directly sanctioned as part of wider process of ending up the non-punishment by spreading and implementing strict rules against bribery. If bribe givers feel obliged to give bribe, it is more likely that they will come forward and report bribery, which should be encouraged through

¹¹Business, Corruption and Crime in Montenegro, UNODC RAI, 2013

introducing new channels for reporting the cases of bribery (such as telephone lines for reporting corruption).

In addition to identification of the party that initiated bribery, it is also important to know about the time of giving bribe because it can provide a better insight into the motivation and purpose of bribery. Advance payments are usually considered necessary for completing the procedure, while those payments made after the public service has completed the work are considered the sign of gratitude or bribery that use the payment as “the sweet” that will allure public servants into dependant relationship, since the acceptance of gifts means public servants has committed in advance to return the favour to the business entity after a certain time. If we analyse the form of bribe payment in relation to the modality – whether bribe is offered or asked voluntarily, data reveal different inclinations of bribe givers and takers. Public servants who directly or indirectly ask for bribe will often require the payment in the form of money, while business entities which offer bribe to public servants usually decide for cheaper option related to their everyday business activities, such as giving food or beverages (in the accommodation and food services sector), or other type of goods and service (especially in the sector of trade).

4.3. Reporting Bribery

There are numerous reasons why business entities decide to disclose bribery in a way to report corrupted public servants to police and other competent authorities. Business entities often feel forced to give bribe in order to get the service that the state should be delivering without extra charges, on time and in a quality manner. Bribe is therefore an expenditure that directly reduces the company’s profit – faced with routine tasks such as tax payments, health and safety inspections or customs clearance, business entities implicitly agreeing to give bribe increasing thereby the expectations of public servants in relation to regular future payments which ultimately may result in substantial expenditures. At the same time, long-term market benefits for business entity are not clear: the very fact that a public servant regularly takes bribe clearly indicates that the competitive advantage generated by bribery will soon disappear unless other business entities engage in corruptive actions as well.

The fact that only a small share of business entities in Montenegro turn to official competent authorities such as the Agency for Fight against Corruption, in order to submit a complaint on corrupted servants that take bribe, imposes an important question – why don’t business entities report bribery when, in theory, they have good reasons for doing so? In comparison to other Western Balkan countries, not reporting bribery in Montenegro is usually justified by the perception that it is a common practice and that there is no need to report it. The prevailing attitude is that the bribery is not reported because the payment has already been made (if it is a gift then it has already been received as a token of attention for the provided service), as well as that it is pointless to report corruption when nobody would care about it.

The challenge for anticorruption policy creators is to encourage as many business entities as possible to report bribery and support fight against corruption. Creation of new and safer channels for reporting corruptive actions will result in increased number of reports only if there is a general opinion that bribery is not acceptable, that turning to authorities is worth the

effort and that reporting corruption will generate an adequate reaction by competent authorities.

5. POTENTIAL SOURCES OF CORRUPTION IN BUSINESS IN MONTENEGRO

Every segment of business that requires excessive public regulations and diverge bureaucracy is a potential source of corruption. Modern and efficient legislative framework is a necessary component of optimal business climate since it assumes that rules are clear, that parties can easily get the information they need, that procedures are simple and economic, that all actors are treated equally and, what is particularly important, that they trust the regulatory system they are fairly familiar with.

Business environment in Montenegro has undoubtedly been improved over the last few years. A set of new laws which have been harmonised with EU standards has been adopted, significant institutional reforms has been implemented in key areas: fiscal system, financial sector, payment transaction, privatisation, restructuring etc. However, entrepreneurs still face the unfavourable business environment¹² underpinned the most by complicated regulatory framework, and long and expensive administrative procedures. A lot has been done on adoption of legislation that encourage growth but further efforts are needed to have effective regulation in practice and to ensure Montenegro satisfies the standards of competitive market economy and European integration process requirements and to continue to attract diverse investments needed. These factors greatly contribute to the weight, risk and growth of business costs in Montenegro, representing thereby a significant source of corruption. Complicated and slow procedures are the key factor that encourages corruptive actions, which companies often calculate into the business costs. In that sense, simple procedures and intensive post-control mechanisms, with a quality reference system for the work done – represent a far more efficient way of fight against corruption.

5.1. Corruption in Procedures of Obtaining Work Permits

In order for newly founded enterprise to start its operations, it has to obtain permission from a competent municipal or state authority – a decision on complying with terms and conditions related to technical equipment, safety at work, environmental protection and others. Apart from being a great unknown to the party, the procedure is relatively expensive, complicated and decentralised, another potential source of corruption is the fact that this procedure is not conducted in the manner set forth by the law. Complicated procedures at different levels are recognised as one of the major obstacles to doing business by entrepreneurs that participated in the focus group organised in cooperation with MEF. The same is indicated in the findings of the survey conducted by the Centre for Democratic

¹²Regulatory Framework in Montenegro (2013), Montenegrin Employers Federation

Transition and Human Rights on attitudes on and perception of corruption by business sector representatives¹³.

5.2. Corruption in Construction

Regarding construction, MEF survey findings and focus group discussion outcomes point out a particularly problematic procedure of collection of necessary documents for obtaining construction permit. A set of documents that are needed for getting the permit has not been precisely specified by one legal act but with more separate regulations that companies are mostly not familiar with. It is the reason why the list of necessary documents very often contains a provision “other documents”, which makes it difficult for small investors to handle the process. It gives a great discretion power to persons that work on issuing the approvals. The process of permit issuing is extremely long and complicated since it requires collection of numerous documents and from a few different public institutions with very weak interconnection. Besides, according to private sector, the costs of collecting documents are considerably higher than realistic.

5.3. Corruption in Public Procurement

Corruption in public procurement represents one of the most serious types of corruption. Public procurement involves two parties: contracting authority and tenderer whereby both sides can to a great extent corrupt the process in its every phase.

The most common types of corruptive actions by the contracting authority are:

- Development of specifications for required goods and services so that they correspond to a particular tenderer with which there is a corruptive agreement.
- Entering into direct negotiations with only one tenderer, explaining it is due to the urgency that the tendering procedure cannot be carried out,
- Violation of rules on confidentiality of bids in a way to open the received offers before the set deadline,
- Hindering the participation of potential tenderers in a way to set inappropriate terms and deadlines or due to a bribe.

On the other hand, the tenderer can:

- Work in collusion with the contracting authority on setting the price of the bid,
- Support the development of discriminatory technical specifications,
- Influence and give bribe to the members of commission in charge of opening and evaluation of bids.

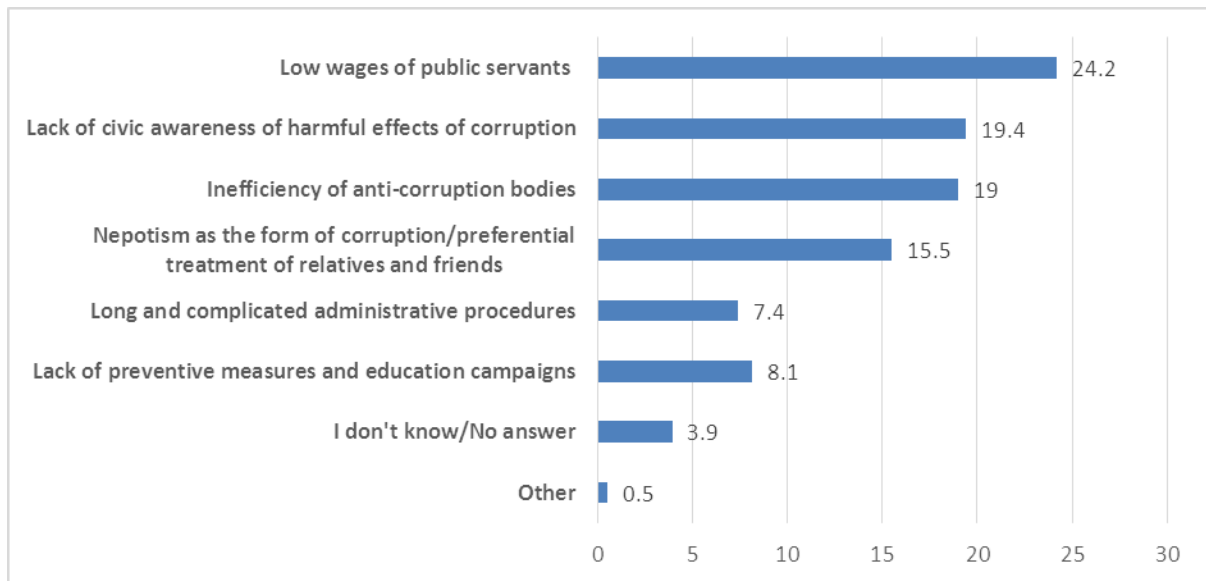
5.4. Corruption in Other Areas

¹³Judges, Lawyers and Business Sector Representatives Opinions on Corruption, the Centre for Democracy and Human Rights (CEDEM), Podgorica, 2013

From private sector point of view, customs service is another area where there is a widespread corruption. Still, Customs Administration is one of the rare public administration bodies that has processed a certain number of corruptive cases of its employees. It seems that the closeness of that system coupled with unawareness of provisions that specify the customs procedures, whether on imports, exports or transit, has a substantial influence on perception of corruption.

Additionally, there is a widespread opinion on corruption within inspection authorities. The major problem indicated therewith are the actions taken by market inspection, which resulted from the fact that 80 per cent of Montenegrin SMEs is registered for operating in trade sector. And indeed, it seems that market inspection does not apply the principle of prevention – pointing to the wrongdoing but leaving a decent deadline for eliminating the mistakes. Almost every visit by the market inspection ends up exclusively with the imposition of fines, regardless whether the noticed wrongdoing has been on purpose or due to unawareness of the regulations. A wide range of fines that can be imposed for the same type of violation leaves room for a series of corruptive actions.

Relevant surveys of Anticorruption Initiative Directorate indicate certain trends when it comes to perception of corruption in Montenegro providing clear picture of the key disadvantages. Citizens believe to a great extent that basic causes of corruptive behaviour are the following: low wages of public servants, the lack of civic awareness and responsibilities in regards with harmful effects of corruption, inefficiency of authorities in charge of combating corruption as well as the lack of preventive measures.



Graph 2

Employers often complain that the system is made supportive to corruption. As companies they are in the position to wait for approvals, endorsements, permits etc. for a long time without believing they will get it. Administration behaviour force employers to find legal voids so that they can operate normally. Very often it entails taking shortcuts, which interviewees openly admitted. Illustrating an example, one of them said that some procedures

were introduced deliberately in order to “force” desperate employers to offer bribe to overcome the situation.¹⁴

6. IMPACT OF CURRENT MEASURES –PROGRESS OF MONTENEGRO

In the area of fight against corruption, there is a lag behind referring to compliance to certain measures within negotiation chapter 23, both in terms of adoption and harmonisation of legislation and its implementation. The progress is obvious and the conditions for proper fight against corruption have to a great extent been put in place across different levels. However, it must be realised in practice and have practical outcomes.

Having in mind a great number of institutions and bodies in charge of corruption, Montenegro has to strengthen its overall capacities in order to properly coordinate, implement and monitor all planned activities, which were pointed out very clearly in the last EC Progress Report on Montenegro.

In December 2015, the Parliament of Montenegro set legal grounds for independent agency to combat corruption authorising it to carry out administrative investigations. The Agency became operative on January 1st 2016. In this way, a certain progress was made in relation to strengthening legal and institutional anticorruption framework. Once a new Law on Prevention of Corruption entered into force, a new Agency for Fight against Corruption was launched in January. Its competences cover major areas of combating corruption, including conflicts of interests, property cards, and incompatibility of functions, integration plans and protection of whistle-blowers. The Agency also takes care of implementation of the Law on Lobbying and is authorised to check financing of political parties. The new Agency brought together the Anticorruption Initiative Directorate that used to be competent for coordination of anticorruption policy and awareness raising and the Commission for Prevention of the Conflict of Interests. The new Agency will also take over the competences and human resources of State Election Commission (SEC). In relation to the seriousness and the scope of work that should be performed, the challenges and weaknesses in regards with the Agency existing administrative capacities and resources were recognised at the very beginning. The Agency must have a necessary independence, adequate resources as well as the access to all relevant information in possession of other institutions.

Anticorruption Initiative Directorate (AID) continued with carrying out awareness raising campaigns, organisation of trainings for fight against corruption and workshops on integration plans for public officials.

For the time being, it is necessary to strengthen the capacities for inspection of public procurement and to introduce a full electronic supply as the instrument for achieving greater transparency. The development of the risk assessment methodology remains to be finished. The steps have been taken to improve the internal control mechanisms within Police Directorate, Customs and Tax Administration. In June 2015, the Government adopted a methodology on inspection control risk analysis; it, however, contains weaknesses that need to be eliminated as soon as possible. Overall, there is a strong and urgent need for improvement

¹⁴ *Judges, Lawyers and Business Sector Representatives Opinions on Corruption*, the Centre for Democracy and Human Rights (CEDEM), Podgorica, 2013

and strengthening of internal control and inspection mechanisms within public administration as well as for the enhancement of their interaction with law enforcement authorities.

Competent authorities and directorates realise a series of raising awareness campaigns (one of the examples is the campaign named “Not a Cent for Bribe” carried out by AID), and provide trainings on how to combat corruption and workshop on integration plans for public officials. The protection of whistle-blowers should be more effective in practice in order to facilitate reporting of corruptive actions. It is necessary to find a rightful balance between the right to free access to information and rules on personal data protection, taking into account the necessity to ensure transparency of both responsibilities and work of public agencies and officials.

Repressive measures in combating corruption, institutional and operational capacities of prosecutors, judges and police for combating corruption are still low. Prosecutor’s service including special prosecutor’s office lacks administrative staff. Prosecutor’s office special investigating team still have no access to relevant databases, neither human or financial capacities nor especially expert knowledge in finances. Further specialised trainings are needed at all levels. It is necessary to strengthen the capacities for conducting system financial investigations in the cases of corruption.¹⁵

7. IS IT POSSIBLE TO COMBAT CORRUPTION IN BUSINESS?

If the question is whether it is possible to successfully and efficiently combat corruption, then the answer is – Yes. However, fight against corruption has to be permanent, since the possibility of slipping into corruption is always present, especially in transition countries such as Montenegro. The key question therefore is not whether corruption can be fought against but if there is a will to initiate the fight which usually depends on the political will.

Countries with weaker economies, countries in those in transition or those that have completed the transition process and are now experiencing the institutional consolidation, very often seem to have established strong instruments for combating corruption (anticorruption commission, government agency etc.). Unfortunately, those institutions are more formal and cosmetic than essential i.e. they are rather the result of complying with international obligations than the country’s response to internal needs and initiatives. Countries willing to commit to a meaningful fight against corruption have to primarily start the process of intensive revitalisation and strengthening of their public administration. It refers to strengthening administrative and financial capacities in order to have public administration strongly independent in its work. Such approach include recruiting highly qualified officers that are very well paid and provided with adequate working conditions to conscientiously perform entrusted tasks. Adequate and efficient performance with no unnecessary delays, which rely on professionalism and clear managerial responsibility across institutional hierarchy, is extremely important for creation of a strong and independent officer and, consequently, the overall state authority.

As a matter of fact, every serious fight against corruption in business have to be systemic and to include several fundamental areas:

¹⁵ *Montenegro Progress Report 2015*, European Commission, 2015

- Political responsibility through public and transparent political decisions, and visible and equal competition between political parties;
- Strengthening institutions e.g. the parliament through public responsibility and public audits of budget revenues;
- Judiciary, through strengthening the independence of courts and investigation of budget irregularities;
- Independent public prosecutor's office, through strict execution of norms, measures and fines;
- The Government and public administration through supervision of public tenders, budget sources and public property;
- Civil society institutions through their participation in public life from local to highest levels;
- Investigative role of media in public actions and their independence;
- Associations of citizens that should disseminate information on corruption, suggest actions, organise public hearings and discussions thus becoming the state's ally in combating corruption;
- Creation of prosperous private sector (through simplification and rationalisation of procedures for starting and running a business as well as the transparency of business ownership and operations).

Through in-depth conversations with the target group within focus group discussion that was organised in cooperation with Montenegrin Employers Federation we reached very concrete viewpoints. Employers' main impression is that the trend of European integrations is a useful process that has signified intensive reforms, but the practical impact of measures and policies has not yet been felt. They think that corruption is often caused by complicated legislation that regulates business operations. Overall conditions are better than before and they believe that both their colleagues and they are more willing to report corruption today than they used to be. They reckon that involvement of different groups, especially civil society organisations and media, in monitoring of these processes is a substantial solution.

One of crucial concepts of fight against corruption rests upon collective actions principle. Employers believe that those who are not involved are the one that lose. Namely, if their companies are the only to respect rules that they are going to suffer. In situation like this they prefer fighting for their business the best way they can based on informal but realistic rules of the game.

8. HOW TO COMBAT CORRUPTION – RECOMMENDATIONS

In its strategic document *5 Business Killers*, Montenegrin Employers Federation recognised corruption as one of the *killers* and provided key recommendations for improvement of the current state of affairs. They primarily refer to:

- Creation of adequate regulations, ensuring their correct interpretation and their consistent implementation in combating corruption;

- Improvement of public and private sector cooperation ensuring higher transparency of actions by institutions in charge of cooperation with private sector;
- Consideration of possibilities to reduce taxes, fees and charges; simplification of administrative procedures at both national and local level – particularly those that have been recognised as significant causes of corruption;
- Improvement of public administration performance, making it transparent and applying ethical principles in their operations;
- Promotion of applying ethical principles in business operations;
- Ensuring greater efficiency and effectiveness, the control over public authorities and services (inspections, judges, customs officers...), increase responsibilities of both public institutions and bodies, as well as public officials, civil servants; affirmation of preventive rather than repressive measures and ensuring equal treatment of businesses in procedures, processes and controls;
- Further promotion of the existing anticorruption institutions (and the importance of reporting corruption), ensuring guaranteed anonymity and confidentiality in reporting corruption as well as the adequate and safe model of implementing sanction mechanisms;
- Improvement of public procurement system so that it ensures economic use of public resources and transparency, encourages competition, set objective and predefined decision making criteria and eliminate the possibility of abuse
- Simplification of tendering documents and conditions for taking part in tenders, their adjustment to SMEs; ensuring equal opportunities for all bidders and contracting parties and control over execution of contracts;
- Encouraging greater participation of public in anticorruption actions and providing support to anticorruption initiatives taken by NGOs and media;
- Regular informing of public about all cases of anticorruption practice as well as about the individuals taking part in such actions (using print, electronic and online media).

8.1. Key Recommendations in Several Most Significant Strategic Directions

8.1.1. Restore Trust in Institutions

The findings we presented in this report clearly pointed out that the major problem related to fight against corruption at all levels and especially in business – was employers and citizens insufficient trust in institutions of the system. Such data the best illustrate the fact that despite adoption of the whole set of laws and establishment of institutional framework, institutions still lack the strength often experiencing political and individual influence – they still have not been able to carry out their work independently. Having such institutions “on the other side of the table” employers choose to remain inert and are not willing to be active and engage in the process of reporting corruption. Namely, such distrust in institutions does not allow a citizen to fully engage in combating this social problem by pointing to concrete cases of corruptive actions – that he/she had the opportunity to face or is able to testify about.

In order to boost their integrity institutions needs to be strengthened through additional advancement of the existing solutions and implementation of current legislation. Substantial changes of anticorruption laws have taken place so now the adopted solutions have to be thoroughly implemented. An example in this regard is the new Law on Prevention of Corruption that clearly specifies the necessity of strengthening institutions through implementation of legislative framework and adoption of integrity plans. Based on the estimates of liability to corruption of certain positions and procedures and of other types of biased actions by public officials and employees within a public authority, the authority adopts the integrity plan containing measures for prevention and elimination of potential causes of corruption and provides citizens' trust in their work.

Citizens therefore, has to be sure that institutions will act in accordance with laws once they decide to report corruption i.e. they have to be sure that their reports will be approached adequately. Finally, they expect institutions to show concrete results and to finally take responsibility and impose sanctions. This has to be achieved by shaping regulation so it becomes a part of a sustainable system and by investing efforts into a proper implementation of legislation as such. Implementation has to rest upon clear and professional state institutions performance, but also upon correct interpretation of legislation and familiarisation of key social groups with its contents. In this regard, it is especially necessary to work upon raising the transparency as one of the first preconditions for pointing to the cases of violations or mistakes at work.

8.1.2. Ensuring More Intensive Public Dialogue

In the context of combating corruption in business in Montenegro, a major part of the problem lies in the way of thinking and the system of values that is woven into the patterns of societal and interpersonal relations in Montenegro that transpose to the work of professional public authorities and business sector as well. These patterns suggest it is "normal" to "treat" someone especially after the requested service is received. The symbol of such respect to someone else's engagement is to be absolutely eradicated from the practice of the overall and especially business relations, being that this is one of the core factors influencing businessmen to participate in corruptive actions since they consider it "normal". The key objective of changing public opinion on corruption is to develop the impulse towards positive changes and resistance to corruption within citizens' mind-sets. Strong public resistance to corruption implies there is the awareness about the phenomenon, its essence and the way it functions, as well as about the consequences of such phenomenon for individual and society as a whole.

Intolerance towards corruption is the result of more and more persistent public requests for respect of the principles of transparency and administration responsibility as well as for shaping new moral standards in the society.

Employers in Montenegro often show they lack awareness about their rights and responsibilities when interacting with state and local administration. General awareness is necessary but also the concrete information about the terms and conditions of provision of certain services.

Enabling public dialogue on corruption is necessary in order to build capacities of all societal actors for fight against corruption. This battle is not fought by adopting laws, by reporting about implementation of action plans and strategies or by publishing statistical data. This battle is fought by creating stronger citizens that will stand against corruption, and by

building social attitude that corruption is unacceptable at any level and in any form. At the same time, a level of political culture should be set – in terms of “what does the public know about the way of exercising power, about the political responsibility and to what extent is the public willing to participate in these processes?” so that it could be estimated in what areas the public will support changes and help the fight against corruption.

Through constructive dialogue on corruption in business, the existing institutions for fight against corruption and the need for reporting corruptive actions should be promoted. Special attention in this regard should be given to building citizens’ trust through safeguarding the anonymity and confidentiality of procedures dealing with reports as well as to a safe model of implementing the sanction mechanisms. The public needs to take part more actively in combating corruption while the initiatives taken by NGO and media in this regard should be supported. It is thus essential to carry out informative campaigns on fight against corruption that have to be organised at both national and local level and in the long run, using a means of mass communication. Public anticorruption campaign represents a tool for training and mobilisation of all societal groups so that they fulfil their roles.

8.1.3. Moral and Legal Responsibility

Different forms of social crisis had been hitting the ex-communist countries for decades, and their effects have been felt along their transformation into post-communist realities. One sort of crisis that may be far deeper and destructive than many others is a moral crisis. In the above mentioned countries it is manifested as widespread corruption, legal and moral anomaly. What makes a political and legal system corrupted? It is the question about the cause, conditions, characteristics and actors of that general crisis which then leads to the analysis of the nature of such crisis, the level of social, political, moral and professional responsibility of those that have political and intellectual influence, but also a wider circle of those who with their behaviour contribute to such crisis. A general impression in Montenegro is that there is a lack of moral, political and legal responsibility for concrete actions. This is highly problematic when it comes to very concrete and obvious examples of performance in every field or when it comes to public officials and other categories directly linked to business processes. The question of legal responsibility, in line with the rule of law, requires the responsibility to be determined and individualised by courts and other competent authorities through special procedure. One should specially point out the role of public figures that make a certain influence, but also to the role of lawyers, experts and officers across different branches and different types of activities. All cases of corruptive behaviour should be properly processed and adequately sanctioned through implementation of clear regulations. In that way, a clear message about the unacceptable types of behaviour that would not be tolerated is sent to the society and employers will be encouraged to report corruption and, in parallel, discouraged from any kind of “corruptive” actions for their personal interest, since no longer will they have the perception that it is a game played by all and that his/her business will suffer unless it itself becomes a part of that game. Repressive measures and sanctions in this regard have certainly a preventive characteristic.

8.1.4. Ethics in Business and Ethical Investments

Awareness should be raised nowadays about the moral evaluation of economy and business behaviour and about introduction of ethics into business relations and patterns. It is becoming more and more common to see non-governmental organisations, citizens' associations and particularly trade unions advocate for using the money from "the funds" for so called "ethical investments" - into those businesses and those companies that do not engage in corruptive actions, that respect workers' rights, protect the environment and do not destroy non-renewable natural resources. In many more democratic countries there are even investment funds that put money exclusively into businesses which respect human rights, workers' rights and protect environment. Today in the world such funds hold enormous money and by investing in strictly defined clients they change business rules and influence the overall system of values in business. In the same way, more and more international and non-governmental organisations, even the states themselves, refuse to work with multinational and transnational companies that use corruption, employ minors, deny workers' rights and destroy natural resources. Additional efforts should be put on enhancing the transparency of work as the basis for application of ethical principles in public administration in Montenegro. However, ethics in business involves both parties meaning intensive promotion of the system of values in addition to the importance of application of ethical principles in business and the very companies.

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