INTOSAI IDI DEVELOPMENT INITIATIVE

SAI RAPID ADVOCACY MECHANISM (SIRAM)

ASSESSMENT REPORT ON THE ALLEGATIONS OF THREATS TO THE INDEPENDENCE OF THE STATE AUDIT INSTITUTION OF MONTENEGRO

September 2025

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EXECUTIVE SUMMARY

Supreme Audit Institutions (SAIs) are cornerstone institutions of public accountability, responsible for ensuring the transparent and effective oversight of public resources. Their ability to operate independently, guaranteed by international standards like the INTOSAI Mexico Declaration on SAI Independence (INTOSAI Mexico Declaration) and affirmed by two United Nations resolutions in 2011 and 2014, is essential to protecting them from undue influence and enabling them to fulfil their mandate.

In response, the INTOSAI Development Initiative (IDI) developed the **SAI Independence Rapid Advocacy Mechanism (SIRAM)** as a tool to address and mitigate threats or infringements to SAI independence. This report, published as part of the SIRAM process, evaluates whether the independence of the Supreme Audit Institution of Montenegro (SAI Montenegro) is in compliance with the principles of the INTOSAI Mexico Declaration.

After conducting an evidence-based assessment, the report concludes that **SAI Montenegro faced challenges in preserving its independence** amidst a legal divergence on the interpretation and subsequent application of the legal framework that governs the employment conditions of SAI Senate members. The report highlights challenges to the legal protections of employment conditions for SAI Senate members, which risks its independence and could impair its ability to fulfil its constitutional mandate.

Key points include a disagreement between the Ministry of Finance and SAI Montenegro over how to apply the law that regulates performance-based salary component for SAI Senate members; and, the Administrative Committee of Parliament has acknowledged that it does not have either the necessary criteria or tools to assess the SAI's performance and therefore cannot determine the variable portion of Senate members' salaries.

The report highlights a major concern: ongoing legal uncertainty around the payment of performance-based salary components to SAI Senate members could undermine the effective application of **Principles 2 of the INTOSAI Mexico Declaration**.

IDI recommends that the issue be resolved promptly, through clear procedures that follow national laws and respect the authority of relevant institutions. Any resolution should protect the SAI's independence, as guaranteed by Montenegro's Constitution and the Law on the State Audit Institution.

By sharing these findings, the **IDI aims to raise awareness of the importance of SAI independence** and encourages stakeholders to take an active role in protecting and strengthening this vital institution.

Ultimately, this SIRAM Report serves as a call to action for citizens, policymakers, and the broader international community to collaborate in ensuring that SAIs remain independent, resilient pillars of transparency and accountability.

1. BACKGROUND

1.1. IDI and its SAI Independence Rapid Advocacy Mechanism (SIRAM)

1.1.1. IDI is a not-for profit, autonomous implementing body mandated to work with SAIs to sustainably enhance their performance and capacity.[i] IDI forms part of the International Organization of Supreme Audit Institutions (INTOSAI), which comprises 195 SAIs around the world.

1.1.2. INTOSAI operates as an umbrella organisation for the external government audit community. INTOSAI is a non-governmental organisation with special consultative status with the Economic and Social Council (ECOSOC) of the United Nations.

1.1.3. SAIs are key pillars of accountability and can only perform their work if they are free from interference and independent. The concept of independence for SAIs is encapsulated in the INTOSAI Mexico Declaration which can be used to benchmark the level of independence of an SAI or assess any potential infringement to independence.[ii]

Principles of the INTOSAI Mexico Declaration

1. The existence of an appropriate and effective constitutional/statutory/legal framework and of de facto application provisions of this framework
2. The independence of SAI heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties
3. A sufficiently broad mandate and full discretion, in the discharge of SAI functions
4. Unrestricted access to information
5. The right and obligation to report on their work
6. The freedom to decide the content and timing of audit reports and to publish and disseminate them
7. The existence of effective follow-up mechanisms on SAI recommendations
8. Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources

1.1.4. SIRAM was developed by IDI to assist SAIs in addressing immediate threats or infringements to their independence. The tool serves as a response mechanism that identifies and mitigates breaches of SAI independence. It builds on INTOSAI global expertise and provides SAIs and interested stakeholders with an avenue to raise concerns regarding the independence of SAIs.[iii]

1.1.5. The SIRAM process consists of four stages:

A. **Information gathering.** The process is triggered when IDI receives the report of a threat to or breach of SAI independence by the SAI itself or external stakeholders. When the report is external, the head of the SAI must agree to initiate the case.

B. **Assessment.** IDI obtains evidence to determine whether the reported threats or breaches are linked to the INTOSAI Mexico Declaration principles. The evidence collected will support the assessment's conclusions and recommendations. Type of evidence collected include official SAI documents related to the case; laws and regulations; external studies and analyses of the SAI and the country context; as well as testimony and feedback from stakeholders.

C. **Response.** IDI issues different types of official responses depending on the circumstances of each case and the results of the assessment. In issuing a response, IDI aims to contribute to improving and protecting SAIs' independence.

D. **Follow-up.** IDI monitors the effect of the SIRAM report and its response, response and the need for introducing additional measures.

1.2. Background: SAI Montenegro's Request for a SIRAM Process

1.2.1. On 28 June 2024, the Director General of IDI received a communication from Mr Nikola N. Kovačević, the Chairman of the Senate of SAI Montenegro[iv], in which he requested the initiation of a SIRAM process, noting "challenges and potential threats to the financial independence and autonomy" of the institution (SAI Montenegro, 28 June 2024).

1.2.2. The potential threat to the financial independence of SAI Montenegro was related to a "change of criteria from the Ministry of Finance regarding the salary policy for members of the Senate, from April 2024". (SAI Montenegro, 28 June 2024).

1.2.3. More specifically, SAI Montenegro pointed out that the Ministry of Finance had provided a new interpretation of the Law on wages of employees in the public sector regarding the authority entitled to determine the variable part of salary for the Senate of SAI Montenegro. In addition, SAI Montenegro asserted that, according to the Ministry of Finance:

> Salary decision for persons who have been elected, nominated and appointed in accordance with the regulations, except for the person referred to in the paragraph 2 of this article, is adopted by the authority or working body, that elected, nominated or appointed them. (SAI Montenegro, 28 June 2024).

SAI Montenegro added that this implies that the decision on the variable part of the salary for the member of the Senate of the SAI should be made by Parliament of Montenegro. [v]

1.2.4. SAI Montenegro informed that this new interpretation of the Ministry of Finance will significantly have an influence on the functioning of the institution, further strengthening of audit capacities and lack of satisfaction of the employees and will also have a negative effect on the current status and position of the SAI within the Negotiation chapter 32 Financial control for European Union accession process for Montenegro. (Montenegro State Audit Institution, 2024)

1.2.5. On 10 July 2024, IDI sent an information request to the SAI Montenegro to get further evidence to determine whether the facts afore described could be considered as threats to the independence of the institution in terms of the INTOSAI Mexico Declaration.

1.2.6. On 22 July 2024, SAI Montenegro shared complementary information regarding the actions adopted in light of the new interpretation of the Ministry of Finance and the impact of this new interpretation on the duties and responsibilities of the SAI Senate.

1.2.7. In addition, between August 2024 and March 2025, representatives from SAI Montenegro and IDI exchanged further communications and held several meetings with the aim of collecting the required information to assess the situation.

1.3. Scope and Objective

1.3.1. The scope of a SIRAM case must be directly tied to the principles of the INTOSAI Mexico Declaration. Based on the information provided, IDI determined that the focus of the case should be to assess the Ministry of Finance's changed criteria for the salary policy covering members of the SAI Senate, done in April 2024, and how the new criteria could impair the institution operating independently.

1.3.2. These considerations are inherently linked to Principle 2 of the INTOSAI Mexico Declaration, which outline the following safeguards for independent SAIs:

A. The independence of SAI heads and members of collegial institutions, including security of tenure and legal immunity in the normal discharge of their duties (Principle 2).

1.3.3. The objective of this report is to assess the extent to which the Ministry of Finance's criteria change to the salary policy for the members of the SAI Senate, from April 2024, represents either a threat or breach to the independence of SAI Montenegro in relation to the INTOSAI Mexico Declaration principles.

1.3.4. Regarding the challenges and potential threats to the financial independence pointed out by SAI Montenegro, these are linked to the safeguards established in Principle 8 of the INTOSAI Mexico Declaration. Based on findings collected during the information gathering stage of the SIRAM process, the IDI has not found sufficient evidence to substantiate the current existence of a sustained threat or breach of the aforementioned principle.

Accordingly, the focus will be on assessing the existence of a threat or infringement of Principle 2 of the INTOSAI Mexico Declaration.

A CLOSER LOOK AT THE INTOSAI MEXICO DECLARATION

PRINCIPLE 2
The independence of SAI heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties

The applicable legislation specifies the conditions for appointments, reappointments, **employment**, removal and retirement of the head of SAI and members of collegial institutions, who are:

- appointed, reappointed, or removed by a process that ensures their independence from the Executive (see GUID 9030: Good Practices Related to SAI Independence);
- given appointments with sufficiently long and fixed terms, to allow them to carry out their mandates without fear of retaliation; and
- immune to any prosecution for any act, past or present, that results from the normal discharge of their duties as the case may be.

1.4. Assessment Methodology

1.4.1. Threats or infringements to the independence of a SAI can take place in both the legal (de jure) and practical (de facto) dimensions. To achieve the objective of the assessment and cover both dimensions, the IDI:

A. Obtained testimonies on the issue included in the scope of the case from SAI Senate members, members of Parliament, members of the Ministry of Finance, as well as a diverse group of stakeholders involved in the institutional environment of SAI Montenegro,

B. Examined documents issued by the Parliament of Montenegro, Ministry of Finance, and SAI Montenegro, amongst others, on the institutional conditions where the SAI operates, aiming at contextualising the potential practical (de facto) threats or infringements to the independence of SAI Montenegro, and

C. Reviewed the applicable legislation to the issue included in the scope of the case.

1.4.2. IDI was in contact with 16 relevant stakeholders and obtained testimony from all the contacted. The testimonies were collected through written communications and online and in-situ interviews, which took place in Podgorica, Montenegro in March 2025.

Table No. 1
Stakeholders who provided testimony during the assessment stage

Function	Stakeholder	Method of collection	Date of interview
Legislative	Members of the Administrative Committee of Parliament of Montenegro	Written Communications In-situ interview	January 2025 March 2025
Executive	Ministry of Finance	Written Communication In-Situ Interview	January 2025 March 2025
State Audit Institution	State Audit Institution	Written Communication Online Interview In-situ Interview	July – December 2024 In-situ Interview
EU	Delegation of the European Union to Montenegro	In-situ interview	March 2025
CSO	NGO Fidelity Consulting	In-situ interview	March 2025
CSO	Institute Alternativa	In-situ interview	March 2025

1.4.3. In addition, a set of relevant documents was reviewed during the assessment to contextualise possible de facto threats and infringements of the SAI's independence, as detailed in Annex No. 1.

2. CONTEXT

2.1. The Governance Framework of SAI Montenegro

2.1.1. Article 144 paragraph (4) of the Constitution of Montenegro establishes that SAI Montenegro is an independent and supreme body of state audit and that it will be managed by a Senate.

2.1.2. According to the OECD (2025), from a legal standpoint, the SAI's constitutional and statutory independence is firmly established, encompassing both organisational and managerial autonomy, (OECD, 2025) with a collegiate governance model and adherence to international standards.

2.1.3. The operation of SAI Montenegro is determined by the Law on the State Audit Institution (Law on the SAI). Article 2 sets forth that SAI Montenegro is an independent body and that no one should influence the members of its Senate in the performance of their duties.

2.1.4. According to Articles 31, 33 and 34 of the Law on the SAI, the SAI Senate is comprised of five members appointed by the Parliament for a permanent position, and the President of the Senate is selected by the Parliament for a single nine-year term amongst the SAI Senate members.

2.1.5. Article 5 and 6 of the Law on the SAI provides the audit institution with the power to conduct financial, compliance and performance audits in relation to expenditures, revenues, debt, and efficiency in the use of allocated funds to the audited entities. Article 4 defines a wide range of audited entities. In addition to national and local government bodies, SAI Montenegro can audit entities (1) which manage state property; receive subsidies; (2) grant or guarantee from the State; (3) do business with a public entity or (4) use EU funds and funds from other international organisations to finance public needs.

2.1.6. In accordance with this, SAI Montenegro's audit scope encompasses all public sector financial, compliance, and performance audits, aligned with the International Standards of Supreme Audit Institutions (ISSAI) principles and a Code of Ethics. The OECD (2025) highlights that audit activity has gradually increased since 2020, with a stronger emphasis on follow-up audits. A Strategic Development Plan (2023–2027) and a quality management strategy were also both adopted to strengthen the SAI’s institutional capacity. Notably, audit reports are systematically published and shared with Parliament, but the SAI’s legislative engagement remains weak, with limited parliamentary discussions and follow-up of audit findings (OECD, 2025).

2.1.7. To fulfil its mandate, SAI Montenegro is organised by sectors according to article 29. Each member of the SAI Senate is responsible for one of these sectors, as per article 31. Moreover, the SAI has a positive practice of inviting civil society, the academic community, and professional associations to submit proposals for the annual audit plan for the coming year (Institut Alternativa, 2025).

2.1.8. Auditing boards are responsible for the supervision of audit procedures and results. Article 44 of the Law on the SAI points out that each Auditing Board shall consist of two Members of the Senate, where one of them must be the head of the sector conducting the audit. If the Auditing Board cannot reach a decision, the decision shall be made by the SAI Senate.

2.1.9. Article 45a of the Law on the SAI establishes that the state auditor is compensated at a salary grade number 4 and is entitled to an amount according to the stipulated coefficient for this salary by the law on salaries of civil servants and state employees.

Moreover, this article provides that, in accordance with the law, SAI Montenegro determines the conditions, assignment and amount of the audit salary supplements for employees of the institution.

2.1.10. Pursuant to Article 51 of the Law on the SAI, the SAI Senate proposes and submits a draft budget to Parliament, which determines the draft budget of the SAI and submits it to the Executive Branch. If the Executive Branch, in the proposal of the Annual Budget Law, makes any changes to the draft budget of SAI Montenegro, it must give a written explanation to Parliament.

2.2. Country Context

2.2.1. Montenegro has undergone significant political, institutional, and fiscal transformations in recent years. While political polarisation has decreased and governance structures have stabilised, substantial challenges remain in institutional accountability, financial oversight, and the implementation of internal audit mechanisms. Strengthening these areas will be crucial for Montenegro's aspirations of European Union accession (European Commission, 2024; OECD, 2025).

Judicial reforms are ongoing, with some advances in transparency and accountability. Yet, consistent prosecution of high-level corruption and organised crime remains limited, and judicial independence must be safeguarded (European Commission, 2024).

Public administration reform has begun, aiming to build a merit-based civil service and improve service delivery. Continued depoliticization and institutional efficiency are essential for restoring public trust and meeting EU standards (European Commission, 2024).

2.2.2. Since the establishment of a coalition government in October 2023, Montenegro has maintained relative political stability, with broad parliamentary consensus on EU-related reforms. While governance structures have previously demonstrated fragility and exposure to institutional blockages (European Commission, 2024), these challenges present valuable opportunities to strengthen institutional resilience and enhance the effectiveness of public administration. Local elections have been organised in five municipalities, reflecting ongoing democratic engagement. (European Commission, 2024).

2.2.3. Despite progress in strengthening democratic governance, more can be done to address government fragmentation, foster inter-ethnic dialogue, and increase the transparency of legislative processes can significantly improve the effectiveness of policy implementation (OECD, 2025). Moreover, strengthening mechanisms for civil society engagement is important and can offer a promising path toward reinforcing public sector accountability and inclusive governance (European Commission, 2024).

2.2.4. Strengthening accountability mechanisms between institutions and their respective sector ministries presents a valuable opportunity to enhance the strategic oversight and policy coherence of portfolio ministries. Transitioning public administration management from a focus on formal compliance toward a results-oriented approach can further improve service delivery and institutional performance. (OECD, 2025).

2.2.5. In July 2024, Parliament filled the long-standing vacancy for the fifth Senate member of the State Audit Institution, a post that had remained unoccupied since January 2021. As flagged by the IDI, in its SIRAM report from June 2023, these delays undermined the independence of the SAI (European Commission, 2024).[vi]

2.2.6. Montenegro has taken important steps to advance its anti-corruption agenda- notably through the adoption of the 2024–2028 Strategy and legislative amendments concerning asset declaration, whistleblower protection, and lobbying regulations. These reforms provide a strong foundation for enhancing integrity and transparency across the public sector, however, further efforts to strengthen enforcement mechanisms will be essential to fully realise their potential. Addressing implementation challenges and ensuring more effective responses to high-level corruption cases is essential to foster public trust and align with European standards (European Commission, 2024).

3. ANALYSIS

IDI's SIRAM methodology is used to assess whether the independence of a SAI has been compromised. It examines whether the principles of the INTOSAI Mexico Declaration have been violated or threated within the scope of an assessment.

FACTS COLLECTED

3.1. As notified by SAI Montenegro and confirmed by the Ministry of Finance[vii], on 25 April 2024, the Directorate for Payroll Calculation, Control, and Policy Analysis of the Ministry of Finance, within the centralized payroll system, withdrew the data inserted by SAI Montenegro for the payment of the variable component of salaries of the members of its Senate correspondent to April 2024, stating the following:

> "with insight into control of payroll related to allocation of variable parts of salaries, we point out the Law on the wages of employees in the public sector, Article 31 paragraph 6: Salary decision for persons who have been elected, nominated or appointed in accordance with the regulations, except for the persons referred to in the paragraph 2 of this article, is adopted by the authority or work body that elected, nominated or appointed them. (Directorate for Payroll Calculation, Control, and Policy Analysis, 2024)" (Montenegro State Audit Institution, 2024).

3.2. On 30 April 2024, the Chairman of the Senate of SAI Montenegro formally notified the Ministry of Finance of the matter, affirming that, pursuant to Article 51 of the Law on the State Audit Institution and Article 60 of its Rules of Procedure, the SAI has financial independence.

Furthermore, the Chairman of the Senate of SAI Montenegro added that, in accordance with Article 7 of the SAI's Rules of Procedure, the SAI Senate is empowered to establish permanent or ad hoc working bodies composed of members of the Senate and employees of the institution, and it is authorised to determine remuneration for their participation.[viii] The Chairman of the Senate noted that the Rulebook on the Variable Part Salary for Employees of the State Audit institution is consistent with this provision of the Rules of Procedure of the institution.

In this context, the Chairman of the Senate of SAI Montenegro emphasised that financial resources intended for the payment of the variable component of salaries had been duly allocated in the 2024 Budget, under budgetary account / item 411 – gross salaries and contributions paid by the employer.

In light of the above, the Chairman stated that SAI Senate holds a different view. Namely, that the interpretation advanced by the Directorate for Payroll of the Ministry of Finance "… does not apply to the employees of the State Audit Institution, both to the members of the Senate-leader of the Sector and other employees of the Institution." (Montenegro State Audit Institution, 2024)

Finally, the Chairman of the Senate of SAI Montenegro asserted that its financial independence "has been directly jeopardised by the Executive" (Montenegro State Audit Institution, 2024).

3.3. As a response to the communication from the SAI Montenegro, the Ministry of Finance, on 18 June 2024, referred to the provisions of the Law on Wages of Employees in the Public Sector, stating that "the decision on compensations and other incomes for persons elected, nominated or appointed in accordance with the regulations, is issued by the authority or working body that elected, nominated or appointed them" (Ministry of Finance, 2024).

On this basis, the Ministry expressed the view that responsibility for determining the variable component salary, as well as salary supplements for members of SAI Montenegro's Senate, rests with the Parliament.

3.4. On 24 June 2024, the Chairman of the Senate of SAI Montenegro responded to the Minister of Finance, reiterating that, in accordance with Article 144 of the Constitution of Montenegro, SAI Montenegro is an autonomous entity whose governance is entrusted to its Senate. He added that, in line with the constitutional framework, the Law on the SAI stipulates that the competent parliamentary committee responsible for financial affairs shall determine the draft budget of the SAI and submit it to the Executive Branch.

Furthermore, the Chairman asserted that legislation enables the SAI Senate to establish the conditions, procedures, and amounts governing the allocation of the auditor's salary supplement for all employees of the institution.

The Chairman further delineated the legal framework governing the determination of salaries for all employees of the Institution. He asserted that the salary for all employees, both members of the Senate and other employees of the Institution is calculated in accordance with the Law on wages of employees in the public sector, the Rulebook on use of budget funds of the State Audit Institution from the budget account / item gross salaries and contributions paid by the employer, other personal earnings and other expenditures, and the Rulebook on the variable part of salary for all employees in the State Audit Institution of Montenegro, while for the other employees, the SAI also applies the Rules on the titles in the SAI and the Branch Collective agreement for the area of administration and justice

3.5. On 28 January 2025, the Secretariat of the Administrative Committee of the Parliament of Montenegro forwarded a letter from the Ministry of Finance to the IDI, in which the Ministry reiterated – consistent with earlier communications – that, under the Law on wages of employees in the public sector and the Law on the SAI, decisions concerning salaries, compensation, and other forms of remuneration for individuals elected, appointed, or designated are to be rendered by the authority or committee responsible for the election, appointment, or designation, namely the Administrative Committee of the Parliament.

The Ministry further observed that, during a review of a sample of payroll records for April 2024, the Directorate for Payroll Calculation, Control, and Policy Analysis of the Ministry of Finance identified instances wherein members of the Senate were issuing decisions on the variable component of the salary to each other, not following Articles 31 and 35 of the Law on Wages of Employees in the Public Sector.

While acknowledging that the Constitution and the Law on the SAI enshrine the financial autonomy and institutional independence of SAI Montenegro, the Ministry stressed that such independence does not exempt the SAI from observing applicable national legislation. The Ministry concluded that all decisions and actions undertaken by SAI Montenegro must be in congruence with the prevailing legal framework.

3.6. Concurrently, the Chair of the Administrative Committee of the Parliament of Montenegro sent a communication to the IDI, affirming that the Parliament is responsible for appointing the President and members of the SAI Senate, and that the parliamentary committee under her leadership is competent to determine their salaries. She further noted that entitlement of the variable component of salary may arise when an employee demonstrates exceptional performance and delivers outstanding results in the execution of duties.

In addition, the Chair clarified that the Administrative Committee "… does not supervise or control the work of the State Audit Institution, nor does it consider their work report." (Administrative Committee of the Parliament, 2025)

She recalled that the Law on Wages of Employees in the Public Sector was adopted in 2016, and until that moment, independent institutions determined variable salary entitlements autonomously. However, she concluded that "… the new interpretation also applies to the executive power and other independent institutions." (Administrative Committee of the Parliament, 2025)

3.7. Furthermore, at the meeting convened on 6 March 2025, in the premises of the Parliament, with members of the Administrative Committee of the Parliament of Montenegro and representatives from the IDI, it was emphasised that the Committee does not have either the criteria or procedural framework required to assess the performance of SAI Montenegro to determine the eligibility for variable salary components payable to members of the SAI Senate. It was further affirmed that the committee does not possess a mandate to conduct regular oversight of the performance of SAI Montenegro.

3.8. On 19 March 2025, the IDI received a letter from the Ministry of Finance of Montenegro replying to earlier communications of 16 January 2025 and 10 March 2025. The Ministry reaffirmed its previously conveyed position (stated during the meeting with IDI representatives on 6 March 2025) that: 1) it has not infringed upon the SAI's independence,

2) the SAI continues to be governed by the national legal framework, and 3) the institutional independence does exempt the SAI from regulatory compliance.

In particular, the Ministry stressed that, while the Law on Wages of Employees in the Public Sector entitles SAI Senate members to a variable component of salary, it is the Parliament of Montenegro that is vested with the authority to decide on the exercise of this right.

The Ministry further highlighted that Articles 31 and 35, paragraph 6, of the same Law stipulate that decisions concerning salaries, compensation, and other forms of remuneration for individuals elected, appointed, or designated under the law are to be rendered by the authority or body responsible for their appointment. In the case of the SAI Montenegro, members of the Senate are appointed by the Parliament, following a proposal from the relevant parliamentary committee on financial affairs, pursuant to Article 33, paragraph 1, of the Law on the State Audit Institution.

3.9. On this basis, the Ministry asserted that the Parliament of Montenegro, acting through its Administrative Committee, is the appropriate authority for determining the rights and entitlements of SAI Senate members. The Ministry maintained that SAI Senate members constitute a constitutional category of officials appointed by the Parliament, rather than employees entering into standard employment contracts under the Law on Civil Servants and State Employees.

Accordingly, the Ministry asserted that the SAI Senate lacks the authority to unilaterally determine mutual rights and obligations among its members.

> It is indisputably clear that the Senate members represent a constitutional category of individuals appointed by the Assembly of Montenegro, rather than employees who establish an employment relationship and exercise other rights under the Law on State employees and Civil Servants. Consequently, the Senate cannot decide independently on their mutual rights and obligations. (Ministry of Finance, 2025)

3.10. Finally, the Ministry rejected assertions that interpretation of the law had shifted after April 2024, affirming that the Ministry's position remained consistent over time and cited a 2020 audit conducted by the SAI itself concerning the Agency for Electronic Communications and Postal Services as precedent in which the same interpretation of salary determination was upheld.

3.11. In light of the above, it can be concluded that, from 2016 until April 2024, decisions concerning the variable component of the salary for Members of the SAI Senate were made internally by the SAI itself. However, as of April 2024, the Ministry of Finance advised SAI Montenegro that the Administrative Committee of the Parliament would make such decisions going forward. Concurrently, the Chair of the parliamentary Administrative Committee communicated to IDI that the committee does not supervise or oversee the work of SAI Montenegro, nor does it consider or approve its annual reports.

SAI INDEPENDENCE ASSESSMENT

3.12. In accordance with the SIRAM procedure, the role of IDI is to assess whether the factual circumstances presented give rise to threats or breaches of any of the eight foundational principles enshrined in the INTOSAI Mexico Declaration.

This assessment is conducted with reference to those principles and does not entail an interpretation of constitutional or statutory provisions concerning the legal powers, functions, or mandates of a given SAI — such determinations fall within the exclusive remit of the competent national legal authorities designated by the domestic legal framework.

3.13. Within this context, it is essential that the analysis undertaken in this report provides a clear understanding of the applicable principles of the INTOSAI Mexico Declaration in light of the facts presented, as they articulate the minimum international standards for safeguarding SAI independence.

3.14. Principle 2 of the INTOSAI Mexico Declaration establishes that the heads of SAIs and members of collegial bodies must enjoy independence, which includes safeguards such as security of tenure and legal immunity in the normal performance of their functions.

This principle establishes that legislation should clearly set out the conditions governing appointments, reappointments, **employment**, dismissal, and retirement for heads of SAIs and members of collegial institutions, thereby ensuring predictability and legal certainty in their employment conditions.

3.15. While SAIs, as State bodies, are subject to general legal frameworks applicable to the public sector, it is nonetheless essential that the leadership of an independent SAI benefit from clearly defined and legally protected terms of employment. Such protection is indispensable to prevent undue external influence or pressure in the discharge of their constitutional and statutory responsibilities. [ix]

3.16. This principle provides the evaluative framework through which the potential implications of the recent circumstances affecting SAI Montenegro may be assessed. Particularly in terms of whether they constitute a threat to SAI's ability to perform its constitutional mandate free from interference.

3.17. In view of the facts, it is clear that, for several consecutive years, the Montenegro's SAI Senate exercised responsibility for determining the payment of the variable component of salaries for all employees, including its own members. However, as of April 2024, the SAI Senate was precluded from such decision-making.

From that point forward, SAI Montenegro and the Ministry of Finance had differing interpretations of how the legal framework governs the allocation of the variable portion of salaries for members of the SAI Senate. Additionally, representatives of the Administrative Committee of Parliament indicated that it does not possess either the criteria or mechanisms to evaluate the performance of the SAI and therefore are unable to define the variable part of the salary of members of the SAI Senate.

3.18. This situation has created uncertainty regarding the employment conditions for SAI Senate members and its ability to operate without undue external influence.

Such uncertainty is particularly concerning when it pertains to the legal framework governing a constitutionally independent body such as the SAI, whose mandate is to audit governmental financial activities and assess whether public funds were managed effectively, efficiently, and in accordance with applicable laws (OECD, 2011).

3.19. Article 144 of the Constitution of Montenegro affirms SAI Montenegro's status as an independent institution. Similarly, Article 2 of the Law on the SAI asserts that SAI Montenegro shall operate independently, and that no individual or entity shall interfere with the discharge of duties by a member of its Senate.

3.20. Consequently, SAI Senate members must be afforded comprehensive and clear protection, including in respect to their employment conditions, and to ensure the unimpeded exercise of their statutory responsibilities. They must also have the power to manage the SAI without undue external influence.

The absence of a clearly delineated scope of legal protection afforded to the Head of the SAI and members of its governing board that may compromise its independence. This ambiguity currently contravenes the legal certainty sought by Principle 2 of the INTOSAI Mexico Declaration.

3.21. Legal certainty is a foundational element of the rule of law, and ambiguity in legal norms can undermine this principle by enabling arbitrary interpretation and weakening institutional legitimacy.

Legal clarity and the rule of law have deep relevance for the independence of constitutional institutions such as SAIs. The law's legitimacy rests not merely on compliance, but on the capacity of legal norms to guide behaviour through clarity, coherence, and justification. Institutions tasked with constitutional oversight must therefore be governed by unambiguous, stable legal frameworks to operate independently and with authority.

When laws regulating institutional competencies, governance, or remuneration are vague or inconsistently applied, it compromises the rule of law itself. Such ambiguity exposes these institutions—and their leaders—to potential manipulation, political influence, or arbitrary interference. Without legal certainty, the safeguards of independence become rhetorical rather than practical. (MacCormick, 2005)[x]

3.22. Moreover, the principle of the rule of law also determines that legal provisions must conform to constitutional standards and international agreements, ensuring both formal legality and substantive coherence. Laws should be clear, precise, and contextually appropriate to the sectors they regulate. Their accessibility and predictability are essential to avoid arbitrary application and legal uncertainty. Individuals and institutions must be able to understand their rights and obligations and anticipate the implications of the law, particularly in areas such as public sector remuneration, where ambiguity can erode compliance, transparency, and trust. (Constitutional Court of Montenegro, 2022).[xi xii]

3.23. The divergent interpretations held by the Ministry of Finance and SAI Montenegro concerning the legal framework governing the allocation of the variable component of salary for members of the SAI Senate, coupled with the Administrative Committee of Parliament's acknowledgment of the absence of criteria and mechanisms to assess SAI performance, have created legal uncertainty. This ambiguity may hinder SAI Montenegro's ability to provide Senate members with a clearly defined set of employment conditions.

3.24. In view of Principle 2 of the Mexico Declaration on the Independence of Supreme Audit Institutions, the relevant constitutional and legislative provisions safeguarding the autonomy of SAI Montenegro, and the circumstances outlined in the foregoing paragraphs, the IDI considers that the prevailing legal uncertainty regarding the payment of the variable component of salaries to members of the SAI Senate constitutes a potential threat to the independence of the institution.

3.25. Accordingly, it is imperative that this uncertainty be addressed within the framework of the applicable domestic legal order and with full respect for the authority of the competent national legal bodies. Any resolution should duly reflect the distinct status of SAI Montenegro as an independent institution, as enshrined in the Constitution of Montenegro and the Law on the SAI.

4. CONCLUSIONS AND RECOMMENDATIONS

4.1. The INTOSAI Development Initiative concludes that the ongoing legal uncertainty surrounding the payment of the variable component of salaries to members of the Senate of the State Audit Institution of Montenegro poses a potential threat to the effective application of Principle 2 the Mexico Declaration on the Independence of Supreme Audit Institutions. This concern stems from the conflicting interpretations put forward by the Ministry of Finance, the State Audit Institution, and the considerations expressed by the Parliament of Montenegro.

4.2. The INTOSAI Development Initiative therefore recommends that this legal uncertainty be addressed without delay. The matter should be resolved through procedures that are consistent with Montenegro’s legal framework and respect the authority of the relevant national institutions. Any resolution should reinforce the constitutional status of the State Audit Institution as an independent body with a mandate to ensure public accountability, as outlined in both the Constitution of Montenegro and the Law on the State Audit Institution.

ANNEX No. 1
Reviewed documents during the assessment stage

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[i] For more details, see https://www.idi.no/

[ii] Available at https://www.issai.org/pronouncements/intosai-p-1-the-lima-declaration/

[iii] For more details, see https://www.idi.no/work-streams/independent-sais/siram

[iv] Pursuing Article 144 of the Constitution of Montenegro, the Senate manages the State Audit Institution. In accordance with Article 31 of the Law on State Audit Institution, the Senate have 5 members.

[v] Article 82 paragraph (14) of the Constitution of Montenegro sets forth that Parliament appoints and release from duty the President and members of State Audit Institution.

[vi] For more details, see: https://www.idi.no/elibrary/idi-administrative/tenders/independent-sais-work-stream/1756-siram-report-sai-montenegro-29-09-2023/file

[vii] Communications from the Ministry of Finance of Montenegro of 24 January 2025 and 19 March 2025, sent to the Administrative Committee of the Parliament of Montenegro and to the IDI, respectively.

[viii] The Senate may form permanent or temporary working bodies tasked with providing proposals and conducting activities that contribute to the improvement of the Institution's work. In addition to Senate members and employees of the Institution, other individuals may be appointed to these working bodies. Compensation for work in the working body may be determined, with the amount set by the Senate.

[ix] As referred in Paragraph 6.1.1. and 6.1.2. of the Decision of the Constitutional Court of Montenegro UI no. 20/19, dated September 30, 2021 ("Official Gazette of Montenegro", No.130/21 dated December 16, 2021), in Montenegro, conditions for employment encompass the rights and obligations of employees arising from employment, i.e. on the basis of work, the manner and procedure of their exercise in accordance with the law, the collective agreement and the employment contract, as established primarily in the labour law, which applies to employees in state bodies, state administration bodies, local self-government units and public services, unless otherwise stipulated by a special law, i.e. the Law on Wages of Employees in the Public Sector that regulates the manner of determining and exercising the right to salary, salary compensation and other incomes of employees in the public sector, the manner of providing funds and other issues of importance for the exercise of these rights.

[x] According to Dworkin (1986), legal interpretation must be guided by principles that best justify the legal system as a whole.

Institutional independence, therefore, should not be undermined by narrow or unprincipled readings of statutory provisions, but rather upheld through interpretations that reflect the constitutional commitment to fairness, accountability, and integrity.

[xi] The Constitutional Court of Montenegro (2022) in the Decision U-I no. 39/21, adopting the criteria previously established by the Court of Justice of the European Union, has ruled that the principle of rule of law implies that all legal regulations conform to the Constitution and international treaties, and that laws are both formally and substantively consistent, meaning they must not only align legally but also be clear, precise, and tailored to the specific areas they govern. The Court has added that a law's clarity is essential to prevent arbitrary interpretations and uncertainty for its subjects. Everyone must be able to understand their rights and obligations and anticipate the consequences of legal provisions affecting them. If laws are ambiguous or imprecise, legal uncertainty arises, making it difficult for citizens and institutions to comply, weakening trust in governance. The Court reinforces that all legal norms must be accessible and predictable, ensuring that citizens can realistically understand and act in accordance with them. This principle applies across all branches of law, including public sector salaries, to maintain fairness and transparency.

[xii] In Commission v. Poland (C-619/18), the European Court of Justice underscored that judicial independence must be assessed using objective criteria —such as appointment procedures, tenure safeguards, and insulation from external pressure. The judgement reinforces the principle that independence must be real and effective, rather than merely declaratory. This rationale extends to SAIs, whose ability to autonomously manage internal affairs, including performance-related remuneration, is essential to upholding their constitutional oversight role.