



Twinning Project  
No. MD 13 ENPI JH 05 17 (MD/21)



**Support to the strengthening of the operational capacities of the Law Enforcement Agencies of the Republic of Moldova in the field of prevention and investigation of criminal acts of corruption**

**ASSESSMENT OF THE CURRENT STATE OF PLAY IN TERMS OF DECISION-MAKING, INTERNAL PROCEDURES AS WELL AS INTERAGENCY CO-OPERATION, CO-ORDINATION AND COMMUNICATION RELATED TO INVESTIGATION OF CRIMINAL CASES OF CORRUPTION**

MOLDOVA

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## LIST OF ABBREVIATIONS

|                   |  |
|-------------------|--|
| <b>AA</b>         | Association Agreement  |
| <b>APO</b>        | Anti-Corruption Prosecutor's Office  |
| <b>CC</b>         | Criminal Code of the Republic of Moldova   |
| <b>CPI</b>        | Corruption Perceptions Index   |
| <b>CPC</b>        | Criminal Procedure Code of the Republic of Moldova   |
| <b>CoE</b>        | Council of Europe  |
| <b>EU</b>         | European Union   |
| <b>GPI</b>        | General Police Inspectorate  |
| <b>GRECO</b>      | European Commission and Group of States against Corruption   |
| <b>JIT</b>        | Joint Investigation Team   |
| <b>Law on SIA</b> | Law on Special Investigation Activity  |
| <b>LEAs</b>       | Law Enforcement Agencies   |
| <b>MIA</b>        | Ministry of Internal Affairs of the Republic of Moldova  |
| <b>MS</b>         | Member State   |
| <b>NAC</b>        | National Anti-Corruption Centre  |
| <b>NIA</b>        | National Integrity Authority   |
| <b>OECD</b>       | Organisation for Economic Co-operation and Development   |
| <b>PGO</b>        | Prosecutor General's Office  |
| <b>PCCOCS</b>     | Prosecutor's Office for combatting organised crime and special cases   |
| <b>RTA</b>        | Resident Twinning Adviser  |
| <b>SPIA</b>       | Internal Protection and Anti-Corruption Service of the Ministry of Internal Affairs of the Republic of Moldova |
| <b>SRSS</b>       | Structural Reform Support Service  |
| <b>STE</b>        | Short-term expert  |
| <b>UNCAC</b>      | United Nations Convention Against Corruption   |

## SUMMARY

The purpose of this Assessment is to evaluate the current state of play in terms of decision-making, internal procedures as well as interagency co-operation, co-ordination and communication related to investigation of criminal cases of corruption and to draw up recommendations for the beneficiary institutions – the National Anti-Corruption Centre, the Anti-Corruption Prosecution Office, the Ministry of Interior, the General Police Inspectorate and the Customs Service.

In order to achieve this goal, the team of experts has analyzed and evaluated relevant national and international legislation, has held meetings, interviews and discussions with the representatives of the beneficiary institutions, has prepared and submitted a web-based questionnaire, has analyzed the responses to it.

General environmental analysis (Part 2 of the Assessment), based on statistical data and various surveys, such as the Corruption Perceptions Index, the Global Corruption Barometer, etc., shows that despite the developed anti-corruption framework and institutional reforms, corruption remains a major problem in Moldova.

International standards and requirements, related to the scope of this Assessment, are briefly described in the Part 3 of this document. Taking into account the fact that Moldova is seeking to join the European Union, the focus is on the Association Agreement between the European Union and the Republic of Moldova, that establishes the necessity of domestic reforms aimed at the consolidation and effectiveness of democratic institutions and the rule of law.

Part 4 of the Assessment describes the basic legislative provisions of legal framework of Moldova concerning prevention and investigation of criminal acts of corruption, inter alia prescribed in the Criminal Code, the Criminal Procedure Code, the Law on Special Investigative Activity.

Part 5 of the Assessment describes each beneficiary institution (National Anti-Corruption Centre, Anticorruption Prosecution office, Ministry of Interior, General Police Inspectorate and the Customs Service) and provides analysis of legislation and practice concerning areas such as structure and organization, functions and mandates in prevention and investigation of criminal acts of corruption, interagency cooperation, decision making policy, internal procedures, independence. This part also presents findings on key issues.

Part 6 of this document talks about Moldova's cooperation with international institutions and organizations as well as international Legal Assistance in Criminal Matters.

The Assessment completes with general conclusions and recommendations concerning independence, competences, decision making policy, structure and

organization interagency cooperation, institutional capacities of the National Anti-Corruption Centre, the Anti-Corruption Prosecution office, the Ministry of Interior, the General Police Inspectorate and the Customs Service.

## INTRODUCTION

The European Union (hereinafter - EU) is funding *the Twinning Project* "Support to the strengthening of the operational capacities of the Law Enforcement Agencies of the Republic of Moldova in the field of prevention and investigation of criminal acts of corruption" (MD 13 ENPI JH 05 17 (MD/21)) (hereinafter – the Project). It has started in August 2017 and will last for 24 months.

*The Contracting Authority* is the Delegation of the EU to Moldova. *The Project is implemented* by a consortium consisting of specialized institutions from three-member states of the European Union - the Republic of Lithuania, the Republic of Romania and Finland: Special Investigation Service of the Republic of Lithuania (the Lead MS partner), Prosecution Service of the Republic of Lithuania, Ministry of the Interior of the Republic of Lithuania, Police Department under the Ministry of the Interior of the Republic of Lithuania, Lithuanian Customs, Anti-Corruption General Directorate of the Republic of Romania (the Junior MS Partner), HAUS Finnish Institute of Public Management Ltd. (the Junior MS Partner).

*The beneficiary institutions* participating in the Project are the following Law Enforcement Institutions of Moldova: National Anti-Corruption Centre (hereinafter - NAC), Anti-Corruption Prosecution Office (hereinafter - APO), Ministry of Interior (hereinafter - MIA), General Police Inspectorate (hereinafter - GPI), Customs Service.

The *overall objective* of the Project is strengthening of the institutional capacities of Law Enforcement Agencies (hereinafter -LEAs) of Moldova in order to increase the efficiency in the fight against corruption.

*The purpose* of the Project is strengthening of the investigative capacities of NAC, APO and other LEAs of Moldova in the field of prevention and investigation of criminal acts of corruption.

*Component 2* of the Project - Decision making, internal procedures as well as interagency co-operation, coordination and communication related to investigation of criminal cases of corruption are enhanced in line with EU best practices - consists of the following activities:

Activity 2.1. - Assessment of the current state of play in terms of decision-making, internal procedures as well as interagency co-operation, co-ordination and communication related to investigation of criminal cases of corruption (hereinafter – the Assessment);

Activity 2.2. - Study visit in respect of internal regulation and inter-agency cooperation on the investigation of criminal acts of corruption in Romania;



Activity 2.3. - Development of regulations/guidelines on coordination of communication defining the decision-making process, internal procedures as well as interagency co-operation in the course of investigation of criminal cases of corruption;

Activity 2.4. - Training on the new regulation/guidelines related to coordination of communication defining the decision-making process, internal procedures as well as interagency co-operation in the course of investigation of criminal cases of corruption.

According to the Twinning Contract, *the Activity 2.1.* shall be implemented by the:

- Analysis of the regulations regarding the structure, organization, mandate, decision making policy of the institutions engaged in the investigation of the corruption by reviewing already existing regulations;
- Preparation of the questionnaire to APO, NAC, MIA, GPI and Custom Service;
- Conducting workshops with the core team members and several specialists from APO, NAC, MIA, GPI and Custom Service;
- Analysis of the results;
- Drafting of the proposals to improve the mandate and institutional framework by the core team;
- Conducting further workshops to evaluate the proposals of feasibility analysis within the full team;
- Preparing a set of Recommendations to improve the mandate and institutional framework on carrying out the investigative actions of corruption cases in line with the best standards and practices of EU countries.

According to the Twinning Contract, the „Assessment of the current state of play in terms of decision-making, internal procedures as well as interagency co-operation, coordination and communication related to investigation of criminal cases of corruption” is one of the direct outputs of the Activity 2.1. The Assessment has been prepared by *the Team of Experts* consisting of Ms. Margarita Šniutytė-Daugėlienė (STE/Component Leader), Ms. Redita Vinterytė (STE), Mr. Tomas Krušna (STE), Mr. Darius Karčinskas (STE), Mr. Valerij Keldanovič (STE), Mr. Kaj-Erik Björkqvist (STE), with the support of representatives from the beneficiary institutions.

While preparing the Assessment, the team of experts has analyzed and assessed the relevant legal acts of the Republic of Moldova – the Criminal Procedure Code (hereinafter - the CPC), the Criminal Code (hereinafter – the CC), the National Anti-Corruption Strategy for 2017-2020, the Law on Prosecution Office, the Law on Specialized Prosecution Offices, the Law on NAC, Laws of other institutions, legislation related to interagency and international cooperation, etc.

The structure, organization, mandate, decision making policy, institutional capacities, delimitation of competences, the independence of the institutions engaged in

the investigation of the corruption cases had been evaluated during the review and assessment.

Also, meetings, interviews, discussions with the representatives of the beneficiary agencies and questionnaires addressed to them have been used in order to evaluate the Law Enforcement Institutions' personnel experience, relevant knowledge, perceptions of the current situation and opinion on how to improve the efficiency of prevention and investigation of criminal acts of corruption.

# 1. METHODOLOGY

## 1.1. Methods, objectives and focus areas of the assessment

The aim of the Assessment has been to analyze and evaluate national legislation and practice, concerning the independence, decision-making policy, interagency co-operation, co-ordination and communication of institutions, engaged in investigation of criminal cases of corruption and also to draft recommendations on how to improve these focus areas.

The Assessment is based on direct and indirect methods. Attention has been paid to subjective and objective criteria when collecting the information.

Indirect methods have consisted of collection of legislation, evaluation of the analysis reports and international law. These methods were used to determine objective indicators. The comparison has been made based on unofficial translations of the Moldovan legislation and mistakes in translations may thus occur.

Direct methods have included web-based questionnaire, interviews and meetings. The objective has been to acquire information concerning subjective indicators.

The Assessment has been drafted in consultation between the Team of Experts and representatives of the beneficiaries.

## 1.2. Indirect methods

### *Comparative approach*

The experts have applied a comparative approach when assessing national legislation as an indirect method. The experts identified and collected relevant local legislation concerning structure and organization, functions, decision-making policies, internal procedures of the beneficiary institutions, interagency co-operation, co-ordination and communication related to investigation of criminal cases of corruption.

The analysed legal instruments consisted of:

- 1) the Constitution of the Republic of Moldova;
- 2) Criminal Code of the Republic of Moldova;
- 3) Criminal Procedure Code of the Republic of Moldova;
- 4) Law on the National Anticorruption Centre;
- 5) Law on institutional integrity assessment;
- 6) Law on preventing and combating money laundering and terrorism financing;
- 7) Law on Agency for Criminal Assets Recovery;
- 8) Law on Special Investigation Activity;
- 9) Parliament decision approving the National Integrity and Anti-Corruption Strategy for the years 2017-2020;
- 10) Law on the Prosecutor's Office;

- 11) Law on Specialized Prosecutor's Offices;
- 12) Law on Agency for Criminal Assets Recovery;
- 13) Order on Approval of the Disciplinary Regulation of the Public Servant of MIA;
- 14) Law on the Verification of Holders and Candidates to Public Office positions;
- 15) Order on Approval of the Disciplinary Regulation of the Public Servant of MIA;
- 16) Regulation on Monitoring the Life Style of the Public Servant;
- 17) Integrity Law;
- 18) Regulation on organization and operation of the Anticorruption and Internal Protection Service of the Ministry of Internal Affairs;
- 19) Actions Plan of the Ministry of Internal Affairs for the year 2017;
- 20) Law on Customs Service;
- 21) Customs Code;
- 22) internal Regulations of the Customs Service (the Regulation on the Organization and Functioning of the Criminal Investigation Division, the Regulation on Organization and Operation of the IS Division);
- 23) annual reports of the activity in 2017 of the NAC, the APO, SPIA, the Customs Service;
- 24) the Activity Program of the Government of the Republic of Moldova for 2016-2018;
- 25) cooperation agreements between beneficiary institutions;
- 26) the international agreements ratified by Moldova such as the Council of Europe (CoE) Criminal Law Convention on Corruption, the CoE Civil Law Convention against Corruption, the CoE Convention on Money Laundering Seizure and Confiscation of Proceeds from Crime, the United Nations Convention against Corruption (UNCAC) and the CoE European Convention on Mutual Assistance in Criminal Matters.

#### *Evaluation reports and surveys*

The experts have collected previous legal assessments including the GRECO. These reports were analyzed in order to avoid overlapping activities, to achieve detailed objective information concerning the local legislation.

### **1.3. Direct methods**

#### *Meetings and interviews*

The Team of Experts has organized over 40 interviews and meetings with the beneficiary institutions, engaged in prevention, detection and investigation of acts of corruption – NAC, APO, MIA, GPI, the Customs Service.

Meetings and interviews addressed issues related to functions and powers, decision-making policies, internal procedures, independence, inter-agency cooperation,

agreements of collaboration, asset recovery, money laundering and other important issues. The experts have received important practical information that was very valuable for the assessment of the efficiency and sufficiency of current legal regulation.

*Web-based questionnaire*

The Twinning Project Team has prepared and delivered a web-based questionnaire to collect information for the analyses of current capacities (human resources, trainings, technical supply, access to information, etc.) of the beneficiary institutions, effectiveness of cooperation between different bodies. Respondents represented both operational and management level of the relevant institutions. The team of experts received altogether 92 replies from all beneficiary institutions.

## **2. GENERAL ENVIRONMENTAL ANALYSIS**

While Moldova is taking steps to adopt European and international standards to combat corruption and organized crime, corruption remains a major problem. The wider Moldovan society also has a general perception of prevalent corruption among high level officials.

In 2016 Moldova started the reform of the prosecution system and established a new legal framework for specialized prosecutors' offices, including for the APO. However, the new prosecution agency is yet to prove its full effectiveness in combating corruption, including in a non-discriminatory manner.

A 2012 law reorganized the Center for Combating Economic Crimes and Corruption (CCECC) into NAC. The NAC focuses solely on investigating corruption crimes and is subordinated to the parliament (CCECC was under the executive branch). Moldovan judges, who had previously enjoyed full immunity from investigation, can now be prosecuted for crimes of corruption without a prior sanction from their highest self-governing body, the Superior Council of Magistrates, which nevertheless keeps its powers to approve any search or arrest warrant against a judge.

In 2016, legislative initiatives launched by the Supreme Court of Justice in the anticorruption area stalled due to the opposition by Moldovan civil society due to concerns that the creation of anti-corruption courts raised the risk of corruption as there would be no oversight body.

The CC includes articles on public and private sector corruption, combating economic crimes, criminal responsibility of public officials, active and passive corruption and trade of influence which put the legislation more in line with international, anti-bribery standards by criminalizing the act of promising, offering or giving a bribe to a public official. Anti-corruption laws extend culpability to family members; however due to the presumption of legally acquired assets provided for by the Moldovan Constitution, the effective presumption is that of a legal acquirement.

Moldovan laws require private companies to establish internal codes of conduct that prohibit corruption and corrupt behaviour. The CC criminalizes separately corruption and bribery in the private sector.

In 2016, Parliament passed two new statutes to the CC criminalizing the misuse of international assistance funds. This statute will help identify and prosecute any misuse of international donors' assistance by Moldovan public officials in public acquisitions, technical assistance programs and grants areas.

In 2012, as part of the Justice Sector Reform Action Plan, the Ministry of Justice drafted a series of amendments in the anti-corruption area. This package of anticorruption amendments include: new legislation on integrity testing of justice sector officials, the introduction of extended confiscation and illicit enrichment statutes in the Moldovan CC

as per the United Nations Convention against Corruption (UNCAC). The new CC statutes and new laws on integrity testing of public officials and disciplinary liability law for judges were passed in late 2013, and amended in 2016.

Parliament also passed a law in 2016 providing for a gradual increase of prosecutors' salaries in the framework of the prosecutorial reform.

The country has laws regulating the conflict of interests in awarding contracts and the overall government procurement process; however laws are not effectively enforced. For instance, in 2016 anticorruption prosecutors initiated five criminal cases dealing with public officials involved in procurements for the public health and education.

Despite the established anti-corruption framework, the number of cases involving prosecution of corruption did not meet international expectations (given corruption perceptions), and enforcement of existing legislation is widely deemed insufficient. The dismissal, in 2013, of the government on corruption allegations has worsened the Moldovan society's perception of corruption.

According to *the Corruption Perceptions Index* (hereinafter - CPI), Moldova has not made progress in controlling corruption in the public sector and fighting it in recent years. By contrary, from 2012 to 2016, the CPI in Moldova was steadily decreasing and only in 2017 a slight increase of the index was recorded.

*The changes of Moldovan CPI in 2012-2017:*

| <b>Years</b>                          | <b>2012</b> | <b>2013</b> | <b>2014</b> | <b>2015</b> | <b>2016</b> | <b>2017</b> |
|---------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>CPI score</b>                      | 36          | 35          | 35          | 33          | 30          | 31          |
| <b>The rank among other countries</b> | No data     | No data     | 103/174     | 103/167     | 123/176     | 122/180     |

*The Transparency International's "Global Corruption Barometer 2016: Europe and Central Asia"* provides the following data on the corrupt practices of the Moldovan people and the perception of corruption as a phenomenon:

- 1) Citizens are particularly likely to think corruption is one of the three biggest problems facing their country, with two thirds of citizens saying that it should be a priority for the government (67 per cent);
- 2) Citizens are particularly critical of their governments' efforts at cleaning up politics. 84 per cent of citizens rate their government "badly" at fighting corruption;
- 3) 76 per cent of citizens think that the members of the Parliament of Moldova are highly corrupt;
- 4) 69 per cent of citizens say that people working in seven public sector categories (the president's office, members of parliament, government officials, tax officials, the police, judges/magistrates and local government councillors) are highly corrupt;

5) Households in Moldova are at a high risk of having to pay bribes to access basic public services. 42 per cent of households, who had accessed public services in the past 12 months, made an unofficial payment or gift when using that service.

The report “Global Corruption Barometer 2016“ concludes that Moldova, along with several other European and Central Asian countries, is seen as having the most severe corruption problems. It received bad ratings by the citizens across all the key corruption questions, suggesting real and serious corruption challenges in the country, which urgently need to be addressed. Moldova is marked by high perceptions of corruption among members of parliament, high bribery rates and a negative social environment for engaging in anti-corruption actions.

*Public Opinion Survey of the residents of the Republic of Moldova* conducted by the International Republican Institute in 2017 reveals that 94 per cent of respondents think that corruption is very big or big problem in Moldova. Since 2010, this indicator has not changed significantly and ranged from 88 to 96%. The majority of the respondents (38%) are convinced that the main reason for the high level of corruption is the lack of government control and oversight.

Combatting corruption is one of the fundamental priorities of *the Activity Program of the Government of the Republic of Moldova for 2016-2018*, providing for a range of complex measures targeting the following vulnerable areas: anticorruption policies, independency and efficiency of institutions; combating political corruption, strengthening the practice of transparency in the financial reporting of political parties, combating corruption in law enforcement and justice bodies, combatting illicit enrichment and confiscation of illegal proceeds from corruption and related crimes, combatting fraud in using foreign funds, oversight of property, personal interests and conflicts of interests; institutional integrity and public services on electronic platforms.

On 2017 March 30 the Parliament of the Republic of Moldova approved *the National Integrity and Anti-Corruption Strategy for the years 2017-2020* (hereinafter - Strategy) and the Action Plans for the pillars of the Strategy.

The Strategy emphasizes that during the last years, all the anticorruption authorities underwent deep institutional and structural reforms, as a result of which their mandates were reviewed and redistributed, the independency guarantees were changed, and the procedure rules were modified. The Center for Combatting Economic Crimes and Corruption was reformed in 2012 into the National Anticorruption Center, which, at its turn, was several times re-subordinated from the Government to the Parliament and vice-versa, the Anticorruption Prosecutor’s Office created in 2003 was reorganized during 2016 within the prosecution service reform.

Despite the reforms aimed at strengthening anti-corruption authorities, the society loses the interest for the corruption cases of resonance with a very slow examination and



develops the perception of impunity for people involved in such cases, qualifying the actions undertaken at the investigation stage as “media shows” without any judicial endpoint.

Hence, one of the objectives of the Strategy is to increase the attainments of anti-corruption authorities in preventing, combating and sanctioning corruption acts and to improve the mechanism for recovery of assets.

*The statistical data*<sup>1</sup> regarding investigation and prosecution of corruption cases and related issues show that in 2017 the prosecutors of the APO examined 642 reports about the possible commission of crimes. In 449 cases the criminal investigation was started, 193 reports were declined.

The NAC during the year of 2017 there were recorded 1135 referrals on commission of offences. As a result of examination of these referrals, it was ruled to initiate the criminal investigation in 720 criminal cases; in 450 cases the initiation of criminal investigation was declined.

In 2017, the prosecutors of the APO conducted criminal investigation in 1233 cases. 177 cases were sent to court, 124 cases were ceased or stopped. During the same period, the prosecutors of the APO lead the criminal investigation of 2003 cases, conducted by the criminal investigative body of the NAC. 278 cases were sent to court, 332 were ceased or stopped. In 2017 the courts of the first instance with the participation of the prosecutors of the APO have pronounced 270 sentences: 219 of them of convicting 258 persons, 33 of ceasing concerning 42 persons and 18 of acquittal regarding 27 persons.

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<sup>1</sup> The source of statistical data - Report Regarding the Activity of the Anticorruption Prosecutor’s Office in 2017.

### **3. INTERNATIONAL STANDARDS AND REQUIREMENTS**

Corruption, as a phenomenon, has always been present in all countries worldwide and represents a constant threat that should be constantly addressed and overcome by all legal and institutional tools both preventively and repressively. Therefore, the fight against corruption must be a strategic priority in order to ensure sustainable long-term social competence and resistance to corruption in all its emerging forms. This means that corruption should be reduced to the minimum by unselectively discovering and sanctioning each and every case of corruption in practice.

In the course of the transition to the market economy, Moldova has been faced with plenty of serious economic and social problems including high levels of tax evasion and the emergence of a parallel economy. Corruption is regarded as a very worrying problem that impacts many sectors of public service and seriously undermines the government and democracy. The sectors usually mentioned as being worst affected are judiciary, police, custom service, tax authority, health, education and public procurement. The population lacks trust in authorities and, though intolerance towards corruption has been growing, it still does not cooperate enough with them in reporting and detecting corruption.

International cooperation on the fight against and the prevention of corruption takes place on many forums.

#### **3.1. EU-Moldova Association agreement**

The Association Agreement (AA) between the EU and the Republic of Moldova establishes the necessity of domestic reforms aimed at the consolidation and effectiveness of democratic institutions and the rule of law. The Association Agenda aims at facilitating the implementation of the Association Agreement. The civil society and expert community are an invaluable partner in this regard. This regional advocacy project on the “Implementation of Association Agreements between the European Union - Georgia, Moldova, and Ukraine” offers an important contribution to the ongoing policy debates in Moldova. The six policy briefs authored by leading national experts provide an insightful analysis of the state of affairs across a wide range of policy areas. The problems identified by the experts and the recommendations they put forward should not only contribute towards a more informed public debate, but also help Moldovan and European decision makers to advance the goals of the Association Agenda in fields such as integrity and anticorruption, party funding, judicial accountability, banking, and media.

Corruption is the main cause of the deep political and social-economic crises in Moldova. It is impeding the economic recovery and is crippling the development potential of the country. High level political corruption is not only undermining the peoples’ trust in national institutions, but also makes citizens question Moldova’s European path. A comprehensive approach to tackling high level corruption needs to address the lack of

transparency in party funding, strengthen the weak regulatory and oversight mechanism ensuring the integrity of public officials as well as effectively increase the independence and accountability of the judiciary and law enforcement.

It is crucial to organize transparent contests for merit-based selection and appointment of the leadership of the institutions implementing anti-corruption and integrity policies as well as judges and prosecutors. Another priority is ensuring the transparency of decision making process in the Supreme Council of Magistracy and the full implementation of the reform of the prosecution service. However, all of this is difficult to achieve as long as political parties remain dependent on a handful of donors who may have a vested interest in perpetuating the status quo. Therefore, enhancing the transparency of political parties financing and accountability of elected candidates is an essential element of combating corruption and promoting the rule of law.

Setting a cap on annual political donations in accordance with international practices, so that individuals can donate no more than 4-5 average salaries, and legal persons not more than 20 average salaries, would mitigate the increasing dependence of parties on few wealthy donors. Stronger oversight, credible investigation and effective penalties for fraud and malpractice in the banking sector are also necessary to preclude another “billion dollar scandal”. Finally, the role of mass media is particularly important. Hence, independent media require additional support in light of increasing regulatory uncertainty and growing consolidation of politically affiliated media.

The EU must consistently request the Moldovan authorities to ensure stricter oversight over the financial and technical assistance provided for the implementation of reforms under the Association Agenda. The experts also call on the European Union to closely monitor the fight against corruption in Moldova and react through political channels in case of deviations. EU should include strict and quantifiable conditions aimed at ensuring the fulfilment of commitments undertaken by the Moldovan side. Given the concerns about Moldova slipping away from its commitments, the EU is well advised to increase its support for a strong and independent civil society and mass media, as it is imperative not only for holding the national government to account, but also for upholding European values and vindicating Moldova’s European path.

Combating corruption has been among the announced top priorities of all Moldovan Governments since 2009. The 2014 EU-Moldova Association Agenda also provides that Moldovan authorities shall ensure the independence, impartiality, professionalism and efficiency of prosecution service and intensification of the prevention and fight against corruption in all its forms and at all levels, especially against high-level corruption.

The aims of EU-Moldova association are:

a) to promote political association and economic integration between the Parties based on common values and close links, including by increasing the Republic of Moldova's participation in EU policies, programmes and agencies;

b) to strengthen the framework for enhanced political dialogue in all areas of mutual interest, providing for the development of close political relations between the Parties;

c) to contribute to the strengthening of democracy and to political, economic and institutional stability in the Republic of Moldova;

d) to promote, preserve and strengthen peace and stability in the regional and international dimensions, including through joining efforts to eliminate sources of tension, enhancing border security, promoting cross-border cooperation and good neighbourly relations;

e) to support and enhance cooperation in the area of freedom, security and justice with the aim of reinforcing the rule of law and respect for human rights and fundamental freedoms as well as in the area of mobility and people-to-people contacts;

f) to support the efforts of the Republic of Moldova to develop its economic potential via international cooperation, also through the approximation of its legislation to that of the EU;

g) to establish conditions for enhanced economic and trade relations leading towards the Republic of Moldova's gradual integration in the EU internal market as stipulated in this Agreement, including by setting up a Deep and Comprehensive Free Trade Area, which will provide for far-reaching regulatory approximation and market access liberalization, in compliance with the rights and obligations arising out of WTO membership and the transparent application of those rights and obligations; and

h) to establish conditions for increasingly close cooperation in other areas of mutual interest.

Under the article 16 of the AA “Preventing and combating organized crime, corruption and other illegal activities” is agreed that:

1. The Parties shall cooperate on preventing and combating all forms of criminal and illegal activities, organized or otherwise, including those of a transnational character, such as:

- smuggling and trafficking in human beings;
- smuggling and trafficking in goods, including in small arms and illicit drugs;
- illegal economic and financial activities such as counterfeiting, fiscal fraud and public procurement fraud;

- fraud, as referred to in Title VI (Financial Assistance, and Anti-Fraud and Control Provisions) of this Agreement, in projects funded by international donors;

- active and passive corruption, both in the private and public sector, including the abuse of functions and trading in influence;

- forging documents and submitting false statements; and
- cybercrime.

2. The Parties shall enhance bilateral, regional and international cooperation among law enforcement bodies, including strengthening cooperation between the European Police Office (Europol) and the relevant authorities of the Republic of Moldova. The Parties are committed to implementing effectively the relevant international standards, and in particular those enshrined in the United Nations Convention against Transnational Organized Crime (UNTOC) of 2000 and its three Protocols, the United Nations Convention against Corruption of 2003, and relevant CoE instruments on preventing and combating corruption.

Under the article 50 of the AA “Fight against fraud and corruption” is agreed that the Parties shall also cooperate in relation to:

- a) exchanging information, experience and good practice;
- b) improving methods to combat and prevent fraud and corruption in the areas covered by this Chapter, including cooperation between relevant administrative bodies;
- c) ensuring effective cooperation with the relevant EU institutions and bodies, in the case of on-the-spot checks, inspections and audits related to the management and control of EU funds, according to relevant rules and procedures.

### **3.2. United Nations Convention against Corruption (UNCAC)**

In November 2012, as part of the Justice Sector Reform Action Plan, the Ministry of Justice drafted a series of amendments in the anti-corruption area. This package of anticorruption amendments include: new legislation on integrity testing of justice sector officials, the introduction of extended confiscation and illicit enrichment statutes in the CC as per the UNCAC.

The purposes of the UNCAC is to promote and strengthen measures to prevent and combat corruption more efficiently and effectively, to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery and to promote integrity, accountability and proper management of public affairs and public property. Moldova has ratified the Convention and participates in the work of the bodies supporting its implementation.

The anti-corruption work of the CoE is organized under three divisions. It (i) sets with conventions certain standards for anti-corruption work, (ii) supervises the implementation of the conventions in the member states and (iii) provides technical assistance, when necessary, and collaborates with state officials and institutions.

The compliance with the CoE criminal and civil law conventions is monitored by the Group of States against Corruption (GRECO). GRECO relies on a dynamic process based on mutual evaluation and peer pressure, in which the expertise of those conducting practical evaluations and the state representatives participating in the general assembly

are brought together. Moldova joined GRECO in 2001 and has been evaluated by the group on 4 occasions for different themes. The Group has given Moldova recommendations with the aim to further improve Moldova's capacity to combat and prevent corruption.

The more recent country evaluation on Moldova was carried out in 2016, and Moldova is in the process of implementing Phase 4 recommendations regarding prosecutors:

1) Expressly notifying all prosecutors in writing that verbal instructions given to hierarchically subordinate prosecutors are not binding, unless they are confirmed in writing, including in such notifications the procedures to be followed in providing timely confirmations and ensuring that all hierarchical interventions regarding a case are properly documented in practice;

2) That appropriate measures be taken to ensure that the composition and operation of the Superior Council of Prosecutors be subject to appropriate guarantees of objectivity, impartiality and transparency, including by abolishing the ex officio participation of the Minister of Justice and the President of the Superior Council of Magistracy;

3) Maintaining, throughout the transitional period until the Constitution is amended, the application of Article 40(7) of Law No. 294 of 2008 on the Public Prosecutor's Office which provides that the Prosecutor General cannot hold more than two consecutive mandates;

4) That the Code of Ethics and Conduct be communicated effectively to all prosecutors and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; (ii) that dedicated training of a practice-oriented nature and confidential counselling within the prosecution service be provided for all prosecutors;

5) That additional measures be taken in order to strengthen the objectivity, efficiency and transparency of the legal and operational framework for the disciplinary liability of prosecutors.

### **3.3. Criminal Law Convention on Corruption**

The Criminal Law Convention on Corruption is an ambitious instrument aiming at the coordinated criminalization of a large number of corrupt practices. It also provides for complementary criminal law measures and for improved international co-operation in the prosecution of corruption offences. The Convention is open to the accession of non-member States. Its implementation will be monitored by the GRECO. As soon as they ratify it, States which do not already belong to GRECO will automatically become members. Moldova ratified the Criminal Law Convention on Corruption in 1999.

The Convention is wide-ranging in scope and complements existing legal instruments. It covers the following forms of corrupt behavior normally considered as specific types of corruption:

- active and passive bribery of domestic and foreign public officials;
- active and passive bribery of national and foreign parliamentarians and of members of international parliamentary assemblies;
- active and passive bribery in the private sector;
- active and passive bribery of international civil servants;
- active and passive bribery of domestic, foreign and international judges and officials of international courts;
- active and passive trading in influence;
- money-laundering of proceeds from corruption offences;
- accounting offences (invoices, accounting documents, etc.) connected with corruption offences.

States are required to provide for effective and dissuasive sanctions and measures, including deprivation of liberty that can lead to extradition. Legal entities will also be liable for offences committed to benefit them and will be subject to effective criminal or non-criminal sanctions, including monetary sanctions.

The Convention also incorporates provisions concerning aiding and abetting, immunity, criteria for determining the jurisdiction of States, liability of legal persons, the setting up of specialized anti-corruption bodies, protection of persons collaborating with investigating or prosecuting authorities, gathering of evidence and confiscation of proceeds. It provides for enhanced international co-operation (mutual assistance, extradition and the provision of information) in the investigation and prosecution of corruption offences.

### **3.4. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**

Organization for Economic Co-operation and Development (OECD) is one of the leading organizations in the world to engage in the prevention of corruption. One of the main tasks of OECD is to combat bribery taking place in international business. Country inspections are the most important tool for OECD in the monitoring and promoting of the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The scope of the Convention include bribery offences related business transactions across country borders in which foreign officials are subject to bribery. Moldova is not a signatory of Anti-Bribery Convention.

#### *Main measures of the Convention*

The Convention establishes that signatory States can charge any foreign public official with a crime for promising, offering or granting undue advantage, of a financial

or any other nature, whether it is directly or indirectly, by means of actions or omission when performing their public duties, carrying out or obstructing transactions while conducting international business.

The Convention has also adopted tax and accounting standards to prohibit any transactions that facilitate the concealment of corruption of foreign public officials, such as non-existing expenditure records and instituting obligations with no appropriate explanation concerning the purpose, as well as the use of falsified documents by companies aimed at corrupting public officials. In this vein, the Convention states that each State Member must establish civil, criminal or administrative penalties for omissions and falsification in accounting ledgers and records, accounts and financial statements.

The Convention also establishes that signatory States must commit to including the accountability of companies in their legal systems.

To ensure the effective and full implementation of the issues listed above, the Convention establishes that each signatory State must install a systematic and periodic follow-up mechanism.

### **3.5. EU legislation (directives, framework decisions)**

#### *Anti-corruption in EU legislation*

One tool to help anti-corruption efforts is ensuring a common high standard of legislation, either specifically on corruption, or incorporating anti-corruption elements in other sectoral legislation. EU has a general right to act in the field of anti-corruption policies, within the limits established by the Treaty on the Functioning of the EU. In particular, the EU should ensure a high level of security, including through the prevention and combating of crime and the approximation of criminal laws. In its Article 83, the Treaty recognizes corruption as a 'euro-crime', therefore the EU holds legislating powers to regulate this area.

Specific anti-corruption acquis includes the 1997 Convention on fighting corruption involving officials of the EU or officials of Member States and the 2003 Framework Decision on combating corruption in the private sector aims to criminalize both active and passive bribery.

European legislation in other areas such as anti-money laundering and public procurement include important anti-corruption provisions. Further measures have been taken or are under discussion to increase transparency, for example, concerning beneficial ownership and corporate tax transparency, or the contacts between EU decision-makers and interest representatives. Work to fight fraud and corruption risks in the implementation of EU funds is also a corner stone of our anti-corruption policy framework, as the legislative work to establish a European Public Prosecutor's Office and the directive on the protection of the financial interests of the EU testify. The Commission



has worked together with Parliament on a number of legislative initiatives of relevance in the fight against corruption.

In the field of asset recovery, in December 2016 the Commission adopted a proposal for a Regulation on the mutual recognition of freezing orders and will further explore the possibility of introducing non-conviction based confiscation.

#### *Monitoring performances in the fight against corruption by Member States*

Over the past years, the Commission has emphasized anti-corruption as a key element contributing to attaining the growth, jobs and investment priority. Preventing and fighting corruption is a key element in the European Semester cycle of economic governance, which is the main dialogue on economic policy between the EU and national authorities. The annual European Semester country reports include detailed analysis of corruption risks and associated challenges. In relevant cases, these issues are also reflected in Country Specific Recommendations, endorsed each year by national leaders in the European Council. Examples include recommendations to tackle inefficient practices in public procurement, strengthen rules for preventing conflicts of interest, revise the statute of limitations for corruption offences, or address informal payments in healthcare. The most recent Country Specific Recommendations can be found [here](#).

#### *Supporting anti-corruption measures at national level*

The Commission organizes regularly anti-corruption experience-sharing workshops across the EU. This programme supports interested parties from Member States in discussing and sharing solutions to integrity policy problems.

In addition, the Commission provides funding on a regular and ongoing basis to support a wide range of projects via ISF or ESIF funds aimed at improving integrity and addressing corruption in EU Member States, such as:

The Toolbox on Quality of Public Administration, including 170 inspirational case studies, helps national practitioners seeking to improve administrative capacity, for which funding is available from the European Structural and Investment Funds.

The Seventh Framework Programme for research and innovation funded the ANTICORRP research project to investigate factors that promote or hinder the development of effective anti-corruption policies. This interdisciplinary project consisted of twenty research groups in fifteen EU countries.

The Horizon 2020 research and innovation programme funded a project named DIGIWHIST – The Digital Whistle-blower: Fiscal Transparency, Risk Assessment and Impact of Good Governance Policies Assessed. It brings together six European research institutes, with the aim of empowering society to combat public sector corruption through the systematic collection, structuring, analysis, and dissemination of information on public procurement and on mechanisms that increase accountability.

The Internal Security Fund - Police, administered by DG HOME, has funded anti-corruption projects including:

- European Corruption Observatory: a searchable database of European media reports on corruption
- Anti-Corruption toolkit for Small and Medium-size Enterprises
- Transparency International Advocacy and Legal Advice Centers

The Structural Reform Support Service (SRSS) is a service of the European Commission with a mandate to support Member States (upon request) with the preparation, design and implementation of growth-enhancing reforms; focus on providing tailor-made support on the ground; and steer and coordinate technical support provided by the Commission. One of its areas of activity is anti-corruption. The SRSS supports Member States in embedding transparency and accountability in their administrative practices. It offers hands-on technical support for the design, planning and implementation of ethical, anti-corruption and anti-fraud strategies, as well as anti-money-laundering policies. Support is provided at all stages of the reform design and implementation. It also provides support through the design and delivery of training programs.

In 2017, DG HOME commissioned an update for available translations of the preceding of a 2013 study on corruption in the healthcare sector, an area that remains particularly vulnerable. The study identified six typologies of corruption:

- bribery in medical service delivery;
- procurement corruption;
- improper marketing relations;
- misuse of (high) level positions;
- undue reimbursement claims;
- fraud and embezzlement of medicines and medical devices.

Furthermore, the Commission publishes a number of calls on research and activities related to the fight against corruption. These calls are also open to private entities and non-governmental organizations. The Commission provides funding on a regular and ongoing basis to support a wide range of projects via ISF or ESIF funds aimed at improving integrity and addressing corruption in EU Member States. Under ISF-Police, all EU States except Denmark and the United Kingdom participate in the implementation. In contrast, all EU States except Ireland and the United Kingdom participate in the implementation of the ISF-Borders instrument. The four Schengen Associated Countries (Iceland, Liechtenstein, Norway and Switzerland) also participate in the ISF Borders and Visa instrument. Examples of beneficiaries of all programmes implemented under these funds can be state and federal authorities, local public bodies, non-governmental organizations and private and public law companies.

*Technical assistance*

SRSS of the Commission provides assistance to Member State authorities in order to improve prevention and the fight against corruption. The work includes helping EU countries to design and effectively implement structural reforms, apply EU law (otherwise known as the Community *acquis*) in a timely manner, use EU funds efficiently and effectively. Support is available to all EU countries, upon request.

#### *Corruption indicators*

In any policy field, the collection of robust data is important. In 2010, the European Council invited the Commission to develop indicators, on the basis of existing systems and common criteria, to measure efforts in the fight against corruption. Quantitative assessments of corruption rely on surveys of experience, combined with research-based expert assessments. Opinion surveys of perceptions also provide an important indication of the pervasiveness of the problem over time. Where businesses or the general public perceive corruption to be widespread, this can act as a barrier in its own right.

In addition to contributing to efforts through international fora such as the World Bank, OECD and UNODC, and drawing on respected corruption indicators from other sources, the Commission also carries out its own collection of data.

#### *Eurojust*

Eurojust and the Republic of Moldova signed a cooperation agreement in 2014. The signing of the cooperation agreement between Eurojust and Moldova follows agreement in October 2013 on the wording of the draft agreement and long cooperation: Eurojust has had a contact point in Moldova since January 2007, and Moldova has been involved in 13 cases registered at Eurojust, including murder, trafficking in human beings and large-scale money laundering. The cooperation agreement governs closer cooperation and makes provision for the exchange of operational information, including personal data, in accordance with Eurojust's data protection rules.

The cooperation agreement also provided for the possibility for Moldova to second a Liaison Prosecutor to Eurojust and for Eurojust to post a Liaison Magistrate to Moldova. Eurojust currently hosts Liaison Magistrates from Norway and the USA, and from 2015 will host a Liaison Magistrate from Switzerland.

Moldova has also participated in Member States' projects that received Commission funding, demonstrating the need to enhance cooperation with third States. For instance, the Slovenian and Bulgarian Ministries of Interior project on Joint Investigation Teams (JIT) to fight trafficking in human beings in Southeast Europe, in which Eurojust also participated and for which a follow-up request for project funding has been submitted.

Cooperation with third States is increasingly seen as crucial in combating organized cross-border crime and terrorism, as reflected in Article 2 of the cooperation agreement, which states that its purpose is “to enhance the cooperation between Eurojust and the Republic of Moldova in combating serious crime, in particular organized crime and terrorism”.

Cooperation between Eurojust and third States can help to accelerate or facilitate the execution of extradition and mutual legal assistance requests, clarify legal requirements and relevant legislation and identify competent national authorities.

#### **4. THE BASIC LEGAL FRAMEWORK OF THE REPUBLIC OF MOLDOVA ON PREVENTION AND INVESTIGATION OF CRIMINAL ACTS OF CORRUPTION**

Corruption-type criminal activities set forth in the CC of Moldova shall be divided into the ones committed in the public sector (Chapter XV “Crimes committed by officials” of the CC; Articles 324-332<sup>2</sup>) and the ones committed in the private sector (Chapter XVI “Crimes committed by persons administering commercial, social or other non-state organizations” of the CC; Articles 333-335<sup>1</sup>). The key discerning indications of criminal activities committed in the public sector shall be the subject, i.e., an official or civil servant, having administrative powers or carrying out functions of a Government representative, a public person providing public services or carrying out activities related to public interests, or other persons without such powers.

According to Article 274 of the CPC, the power to initiate a criminal investigation is vested to a criminal investigative body or a prosecutor. The order to initiate a criminal investigation issued by a criminal investigative body within 24 hours from the date the criminal investigation was initiated shall be brought in writing to the knowledge of the prosecutor managing the criminal investigation activity.

According to the Article 253 of the CPC, a criminal investigation is conducted by a prosecutor or by the bodies created by law in:

- 1) the Ministry of Home Affairs;
- 2) the Customs Service;
- 3) the NAC.

Criminal investigative bodies shall be organized in central and territorial units and shall be represented by criminal investigative officers appointed within the abovementioned institutions who are administratively subordinated to the chief of the respective institution.

The law prescribes that criminal investigative officers are independent and shall follow the law and the written orders of the prosecutor.

In complex or large-scale cases, the chief of a criminal investigative body with the notification of the prosecutor shall decide to conduct the criminal investigation with several criminal investigative officers. The prosecutor may order that in such cases a

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<sup>2</sup> Article 324 „Passive Corruption“, Article 325 „Active Corruption“, Article 326 „Influence Peddling“, Article 327 „Abuse of Power or Abuse of Official Position“, Article 328 „Excess of Power or Excess of Official Authority“, Article 329 „Negligent Performance of Duties“, Article 330 „Receipt of an Illegal Reward by a Civil Servant“, Article 330<sup>1</sup> „Violation of Rules on Declaring Income and Property by Statesmen, Judges, Prosecutors, Public Servants, and Executives“, Article 330<sup>2</sup> „Illegal enrichment“, Article 332 „Forgery of Public Documents“, Article 332<sup>1</sup> „Fraudulent receipt of means from external funds“, Article 332<sup>2</sup> „Appropriation of external funds means“.

criminal investigation shall be conducted by several officers from different criminal investigative bodies (Article 256 of the CPC).

If necessary, the prosecutor may personally conduct the criminal investigation in any criminal case. If a criminal investigation is conducted by a prosecutor, he/she may order that specific criminal investigative actions be performed by a criminal investigative body.

The competence of criminal investigative bodies is foreseen in Chapter III of the CPC (Articles 266-270<sup>1</sup>):

- *The criminal investigative body of the Ministry of Home Affairs* shall conduct criminal investigations of any crime not referred by law to the competence of other criminal investigative bodies or referred to its competence by an order of a prosecutor;

- *The criminal investigative body of the Customs Service* shall conduct criminal investigations of the crimes provided in Articles 248 (Smuggling) and 249 (Evasion from Customs Payments) of the CC;

- *The criminal investigative body of the NAC* shall conduct criminal investigation with regards to the crimes set forth in Articles 239 (Violation of Crediting Rules), 240 (Use of Means from Internal or External Loans Guaranteed by the State Contrary to their Purpose), 243 (Money Laundering), 279 (Funding Terrorism) of the CC and all corruption crimes, both in public and in private sector, as well as to the crimes committed in relation to such crimes, with the exception set forth in this Code;

- *A prosecutor* shall conduct a criminal investigation for: 1) crimes committed by: a) the President of the country; b) deputies; c) members of the government; d) judges; e) prosecutors; f) criminal investigative officers, police officers and employees of the bodies conducting special investigation activity, in relation to the performance of the professional duties; g) juveniles, if such crimes are especially serious and exceptionally serious; h) employees of the NAC, in relation to the performance of the professional duties; 2) the following crimes: a) attempts against the life of policemen, criminal investigative officers, information and security officers, prosecutors, judges, if the attempt is related to the performance of professional duties, as well as attempts against the life of their family members; b) crimes in the competence of the specialized prosecutor's offices; c) crimes of torture, inhumane or degrading treatment.

- *The APO* shall conduct the criminal investigation in case of crimes set forth *inter alia* in Articles 324–329, 332–335 of the CC: 1) if the crimes were committed by: a) high-ranking officials; b) civil servants holding senior level management positions; c) criminal investigative officers and investigation officers; d) lawyers; e) bailiffs; f) authorized administrators; g) persons representing the management of state enterprises and joint stock companies with the state's majority shares; h) persons representing the management of commercial banks; i) secretary of the Supreme Security Council, head

of the General Staff of the National Army, other persons holding leading positions in the General Staff of the National Army, as well as persons holding a military rank of a General or a special rank corresponding to it; 2) irrespective of the capacity of the person, if the amount, value of goods, services, privileges, advantages in any form and other benefits claimed, promised, accepted, offered, given or received, exceed 5000 conventional units or if the value of the damage caused by the crime exceeds 50000 conventional units.

The APO shall manage the criminal investigation in cases where the criminal investigation is conducted by the criminal investigative body of the NAC.

As is clear from the aforementioned legislation, conducting and managing criminal investigation of all corruption crimes falls within the competence of the NAC and the APO.

According to the CPC the Prosecutor General and his/her deputies may rule by a reasoned order that any criminal investigative body conducts the criminal investigation. However, in practice such instances when criminal investigation of corruption cases (even of a small-scale corruption) would be entrusted to conduct not to the NAC or the prosecutors of APO, are exceptional.

If a criminal investigative body establishes that a criminal investigation is not within its competence, it is obliged to perform any urgent criminal investigative actions. The transcript of the actions performed in these cases shall be attached to the respective case file and immediately, however, no later than within three days, send to the prosecutor managing the criminal investigation who shall send it to a competent body.

In order to collect information to prevent and combat crime, ensure state security, public order, rights and interests of people, detect and investigate crime the special investigation activity shall be conducted. It is regulated by the Law No. 59 on Special Investigation Activity (hereinafter – Law on SIA), approved by the Parliament on 29 March 2012, and the CPC (Chapter III „Sources of evidence and evidentiary methods“ Section 5 „Special Investigative Activity“).

The tasks of the special investigative activity, among others, are:

- reveal criminal attempts, prevent, suppress crimes and identify persons who organize and/or commit them;
- detect and investigate offences.

The special investigation activity is performed by the investigation officers of the specialized subdivisions within or subordinated to the Ministry of Interior, Ministry of Defense, NAC, Protection and Security Service, Protection and Guard Service of the State, Customs Service and Penitentiary Institutions Department of the Ministry of Justice.

The exhaustive list of the special investigation activities is specified in Article 18 of the Law on SIA. Some of the activities may be conducted within criminal proceedings only (i.e. inspection of the dwelling and/or installation of the equipment that ensures the surveillance, video and audio recording, shooting and photographing cameras; surveillance of the dwelling by using technical equipment that ensures the recording; interception and recording of conversations and images; apprehend, examine, hand over, search or lift the mail; monitor the telegraphic and electronic communications connections; monitor or control the financial transactions and access to financial information; documentation with the help of technical methods and means, as well as localization via global positioning system GPS or other technical means; collect information from providers of electronic services; control of money or other extorted material assets; cross-border surveillance; controlled delivery), while others shall be conducted both within a criminal proceedings and outside it (i.e. identify the subscriber, owner or user of an electronic communication system or an access point to an information system; visual tracking; investigation undercover; collection of samples for compared investigation; examination of objects and documents; test purchase). All the activities, mentioned above, need the authorization of the examining magistrate, upon prosecutor's approach, or the prosecutor's authorization.

The Article 132<sup>1</sup> of the CPC sets out the cumulative conditions that should be met in order to carry out special investigative measures within the criminal proceeding: 1) achieving the goal of the criminal proceeding is otherwise impossible and/or administration of evidence can be considerably damaged; 2) there is reasonable suspicion that a serious, especially serious or exceptionally serious crime is prepared or committed, with the exceptions provided by the law; 3) the action is necessary and proportionate with the restriction of the fundamental human rights and freedoms.

If the special investigative activity is conducted within criminal proceedings, the prosecutor coordinates or leads such special investigative activity, controls the legality as well as the results of it. In conducting the special investigative activities, in the framework of the criminal proceedings, the investigation officer obeys the directions wrote by the prosecutor or criminal investigative body.

Only three activities can be made without the interaction of the prosecutor outside the criminal proceedings: interrogation; collection of information about persons and facts; identification of the person. They are conducted with the authorization of the specialized subdivision leader.



## **5. INSTITUTIONS, SPECIALIZED IN COMBATING CRIMINAL ACTS OF CORRUPTION**

### **5.1. Anti-Corruption Prosecutor's Office**

The Prosecutor's Office is an autonomous institution within the judiciary, which is separate from the legislative and the executive branches. Powers and structure of the public prosecution system are defined in the Constitution of the Republic of Moldova. Art. 124 of the Constitution establishes main functions of the public prosecution: criminal prosecution, bringing public charges at court and protection of public interest.

The Prosecutor General's Office (PGO), territorial and specialized prosecution offices form a single public prosecution service, which has the same budget managed by PGO. The Prosecutor General leads, controls, organizes and coordinates the activities of these offices and reports to the Parliament on annual activities of the institution.

The recent changes of the Law on Prosecutor's Office provided for a better procedural independence of prosecutors, specialization of prosecutors and functioning of specialized prosecutor's offices, detailed procedure for career of prosecutors, enhanced powers of self-governance bodies: general meeting of prosecutors, superior council of prosecutors, etc.

The Law on Prosecutor's Office provides for two specialized prosecution offices: the APO and the Organized Crime Prosecution Office. The former specialized military prosecutor's office, transport prosecutor's office and office at the level of the courts of appeal were abrogated. However, Art. 9 of the Law foresees that upon the necessity other specialized prosecution offices may be established by the law.

#### **5.1.1. Legislation regulating the activities**

Legal framework of the public prosecution system of the Republic of Moldova is established by the Constitution of the Republic of Moldova, Law no. 3 as of 25.02.2016 on Prosecutor's Office, Law no. 159 on the Specialised Prosecutor's Offices as of 07.07.2016, other by-laws and internal legal acts.

#### **5.1.2. Structure and organization**

The APO is an independent legal entity within the Prosecutor's Office. Art. 9, par. 4. of the Law on Prosecutor's Office specifies functions of APO: Anti-corruption Prosecutor's office specializes in combating corruption crimes, offenses linked to corruption crimes, and has the following specific powers:

a) carries out criminal prosecution under criminal procedure legislation in cases falling within its competence;

b) directs criminal prosecution for cases in the National Center for Combating Corruption;

c) represents the state charge in the court of the first, appellate and cassation instances for the cases specified in a) and b).

The Prosecutor General approves the regulation on APO activities. APO structure is established by the Prosecutor General, whereas the number of APO prosecutors is determined by the Superior Council of Prosecutors upon the proposal of the Prosecutor General. The archives, secretary, administrative, economic and financial activities of the specialized Prosecutor's Office are ensured by its appropriate internal subdivisions.

APO is headed by the Chief Prosecutor, who reports to the Prosecutor General. APO performs its competencies via prosecutors. The main functions of APO prosecutors are leading and conducting of criminal investigations, bringing public charges at the court, as well as organization, leading and control over the activity of the criminal investigative institution, which is NAC.

APO is functionally and organizationally independent. The budget of APO is reflected separately in the budget of the Prosecutor's Office and shall be administered by the Chief Prosecutor of APO.

The material competence of the APO is established by the CPC and the Law on Prosecutor's Office. Article 270<sup>1</sup> of the CPC defines competences of APO to prosecute cases. Prosecutors in terms of procedural status are mandated with competence to lead investigations, rather than to conduct them themselves, except of certain cases. The competence of APO prosecutors is national wide. APO prosecutors have procedural independence according to the Criminal Procedure Code.

In relation to co-operation at national and international levels, APO co-operates and may create partnerships with organizations and national, foreign and international public institutions. The specialized Prosecutor's Office may directly cooperate with organizations or similar foreign public institutions in order to conduct mutual consultations regarding offenses relegated to their competence, as well as for the exchange of data and information regarding the investigation of those offenses. This does not cover matters related to MLA and extradition.

The staff of APO consists of prosecutors, seconded criminal investigation officers, seconded investigation officers, seconded specialists in different competence fields, prosecutor's consultants, specialists in public relations, public officials, and technical staff. During such secondment, investigation officers act under the authority of chief prosecutor of specialized prosecution office. The legal and organizational solution of secondment allows solving mid-term question of staffing, however, it does not necessary provide for stability, certainty, continuity and extensive expertise within the office. APO shall have sufficient staff assisting to them and adequate budgetary allocations.

### **5.1.3. Functions and mandates in prevention and investigation of criminal acts of corruption**

Procedural activities of APO are carried according to the CPC and the Law on SIA, the later law provides for procedural use of special investigative activities by law enforcement agencies.

The main institutional counterpart of APO is NAC, which is mandated with wide range of competences, involving prevention, investigation and, as a novelty, integrity testing activities.

In relation to operational activities in 2017 APO received 702 referrals about the commission of crimes, compared to 430 in 2016, which represents an increase of 63%. Comparing in 2015, there were only 316 referrals. As result of this, 449 criminal investigations were initiated in 2017, 269 criminal investigations – in 2016, and 172 criminal investigations – in 2015. These figures illustrate a rising number of cases dealt by APO prosecutors.

The same tendency is noticed in relation to investigations conducted by APO prosecutors. The total number of cases in progress for 2017 was 1233, in 2016 – 826 and in 2015 only 307 cases. In 2017 APO prosecutors sent to court 177 cases, in 2016 – 78 cases and in 2015 - 43 cases.

The remaining backlog of cases over the last few years implies a limited prospect of efficient investigation and prosecution thereof. A large number of cases attributed to APO prosecutors does not provide for quality of investigations and prosecutions and in some instances it makes difficult to ensure thorough oversight over a high number of criminal investigations.

In addition to this, the 2017 annual report of APO indicates issues related to efficiency of investigations and prosecutions:

- increasing number of cases to deal with;
- limited quality of investigations initiated by territorial prosecutor's offices;
- need to arrange numerous procedural activities in complex cases;
- delay in receiving expert's reports (accountant's report, in constructions etc.);
- court practice in cases involving APO competence;
- lack of interpreters/translators in APO.

In this light, during 2017 NAC recorded 1135 referrals on commission of offences, in comparison to 1459 referrals in 2016, meaning that there were 324 referrals less (22,2 %), the fact which represents a reduced volume due to the transfer of competences at the investigation of high level corruption to the APO.

APO has identified a number of issues related to the investigation of corruption crimes: delay in some investigations carried out by NAC; lack of NAC leadership towards the exercise of office competences and activity of the criminal investigation officers;

execution within short period of time/immediate of prosecutor's indications; respect of the labour discipline by the representatives of the criminal investigative bodies; due respect of legal provisions related to terms, quality of the criminal investigation and procedural acts. All these issues may be tackled by organizational measures both in APO and NAC and by strengthening inter-institutional co-operation.

Another indicator of APO activities is representation of public charges in courts. In 2017 a total number of cases at first instance courts – 270 cases/327 persons, in 2016 - 228 cases/290 persons, in 2015 – 231case/ 293 persons. As for acquittals the numbers are the following: 2017 – 6,7% cases/8,3% persons, 2016 - 9,2% cases/11,7% persons, 2015 - 8,7% cases/11,2% persons. The acquittal rate, bearing in mind the nature of offenses, is relatively small, unless the figures represent the prosecution of minor corruption cases.

As for the punishments, in 219 sentences with a conviction there were: 52% - fine, 22,5% - imprisonment with fine and application of Art. 90 of Criminal Code, 12% - imprisonment with application of Art. 90 of CC, 4,3%- imprisonment with fine, and 9,3% - imprisonment.

With reference to APO, some issues related to court proceedings were identified: different interpretation of evidence collected, erroneous application of law by courts, interpretation on procedural violations without proper reaction to them, delay of judicial review. These issues should be further assessed by identification of specific reasons of possible shortcomings and coming to close dialogue with courts in round table discussions and/or joint training for judges and prosecutors.

In relation to inter-institutional setup, it has to be noted that Moldova has a well-established institutional chain for fighting corruption. The main institutions are APO, NAC, National Integrity Authority (NIA) and the Chamber of Accounts and the Information and Security Service. Over the last few years, a number of legislative initiatives related to integrity matters was adopted. The practice of implementation of this framework should be continuously followed up.

#### **5.1.4. Findings**

*- to ensure closer cooperation between APO and other law enforcement institutions, including cooperation with National Integrity Authority*

The structure of inter-agency co-operation is legally framed and gives opportunity for good relationships between institutions concerned. There is a potential in relation to APO further co-operation with NIA.

*- to focus the APO activities on high level corruption cases*

It is assumed that APO is dealing with high-level corruption cases, however, APO prosecutors lead all criminal cases investigated by NAC. This legal and organizational setup does not ensure focus on high-level corruption cases. It is proposed to consider that

minor corruption cases in future can be led or investigated by other prosecutors or agencies. There is a risk that focus can be made on cases, which are easier to investigate and prosecute.

*- as a short-term priority to take organizational measures to decrease backlog of cases*

Workload at APO and a continuously rising number of cases will not allow the office properly executing mandated functions. As an option system for prioritization of cases may be further explored. In addition, adequate budgetary and human resources allocations should be in place.

*- to ensure the adequate workflow of APO prosecutors when working with NAC and other institutions (the Customs Service, SPIA, and etc.)*

This observation is interlinked to comment that burden in fighting corruption in future may be shared by different law enforcement institutions.

*- to consider in future possible amendments of the CPC, with the view of delegating competence on investigation of minor corruption cases to the Ministry of Interior*

This may allow reducing backlog of APO cases and focus activities on high- level corruption cases. As interim option, delegation of such powers to prosecutors to prosecutors from territorial prosecutors may be also considered.

*- to distinguish competences of specialized prosecution offices, when corruption crime is identified at Ministry of Interior and the Customs Service;*

Corruption related crimes in the activities of Ministry of Interior and the Customs Service are usually disclosed and investigated together with the criminal offences attributed to the competence of MIA and Customs Service. In these cases, the corruption crimes fall within the competence of APO, and the other related crimes fall within the competence of PCCOCS. In this situation a conflict of competences occurs. According to the Criminal Procedure Code only the General Prosecutor may solve this conflict. It is recommended to review the legal provisions regarding competences in order to prevent the occurrence of such conflicts.

*- to consider better exchange of information between APO and institutions, which is provided with the initial information on the criminal cases*

This may ensure better sharing of material between investigating and prosecuting authorities, necessary to follow up on the quality of initial information/material collected.

*- to propose review the methodology on prosecution of the corruption cases*

This may strengthen specialisation of prosecutors, to form united practice and increase the quality of prosecutions.

*- according to the statistical data provided, there is some indication that the priority is given to the prosecution of passive corruption cases. In this regard, further efforts should be taken ensuring a more proactive approach towards the prosecution of*

*the cases of active corruption. There might be a need for guidelines or manual in relation to opening and necessary investigative steps in cases of active corruption*

*- to consider possible legal amendments allowing the use of more coercive measures at the initial stage of the investigation*

Proposed changes in legal framework may allow for a better detection of corruption crimes, additional legal options in collection of evidence.

*- to improve methodology for evaluation of workload and efficiency of prosecutors*

This activity is crucial for the whole Prosecutor's Office and may allow reallocating current human and financial resources.

*- further strengthen specialization of prosecutors*

APO prosecutors should exchange the best practices in prosecution of corruption cases, participate in continuous training, including personal capacity building training.

*- increase operational capacities of APO, including better use of analytical methods and specialist knowledge for IT forensics*

One of the core issues implying activities of APO is a proper budgetary and human resources allocation. During the on-site visit the matters related with better use of analytical tools and specialist knowledge were mentioned on numerous occasions.

*- further develop e-case system, with additional functionalities related to analysis of information, control of criminal procedure, information exchange with courts and other law enforcement institutions*

The Prosecutor's Office is implementing IT project for electronic criminal case file („*Urmărire penală: „E-Dosar”*”), which is aimed to automate criminal proceedings by use of IT system, ensuring better management, supervision and monitoring of criminal cases. These activities should be further supported ensuring interoperability of the system and aiming to have IT platform for all criminal justice chain.

## **5.2. National Anticorruption Center**

According to the Law No. 1104 on the National Anticorruption Center, NAC is the national authority specialized in the prevention and fight against corruption, corruption related acts and acts of corruptive behavior. NAC has organizational, functional and operational independence in accordance with the terms established by the law.

NAC has the following tasks:

*- preventing, detecting, investigating and curbing corruption contraventions and offenses and those related to corruption offenses, as well as acts of corrupt behavior;*

*- preventing and combating money laundering and terrorism financing, according to Law no. 190-XVI of 26 July 2007 on preventing and combating money laundering and terrorism financing;*

- performing anti-corruption expertise of draft legislative acts and draft normative acts of the Government, as well as other legislative initiatives submitted to Parliament, to ensure their compliance with state policy to prevent and combat corruption;

- ensuring the performance of corruption risk assessment within public authorities and institutions through training and consultation, monitoring and analysis of data on corruption risk assessment, as well as coordination of the drafting and fulfilment of integrity plans;

- carry out operational and strategic analyses of corruption and related acts, as well as corrupt conduct, of information on analytical studies on the corruption phenomenon.

- carry out institutional integrity assessment according to the Law no. 325 of 23 December 2013 on institutional integrity assessment, monitor the implementation of the integrity plans and assess the registered progress.

- recovery of criminal assets.

NAC is a unitary body, centralized and hierarchically structured, composed of a central office and territorial subdivisions.

#### **5.2.1. Legislation regulating the activities**

NAC operates with the following laws: the Law on National Anti-Corruption Centre No. 1104 (with subsequent amendments), adopted 5 October 2002 by the Parliament of the Republic of Moldova, as well as CPC, CC and other Moldovan laws and legislation.

Article 4 of the Law on NAC defines NAC targets, Article 5 and Article 269 CPC defines NAC remit in investigating criminal cases. It establishes that NAC shall carry out pre-trial investigation of corruption-type criminal activities stipulated in Articles 239–240, 243, 279 and 324–335 of CC. But the Prosecutor General may decide under the procedure established in CPC when to assign the investigation of criminal corruption cases to other entities. Moreover, if under the criminal case not only corruption-type, but also economic and other criminal activities are involved, the prosecutor shall decide which institutions shall the criminal investigation be assigned to. In such cases one entity shall be assigned to conduct pre-trial investigation and officers of various institutions shall be included into an investigation group.

#### **5.2.2. Structure and organization**

NAC is headed by a director appointed by the Parliament with the majority vote of elected deputies, for a mandate of 5 years, without the possibility of appointment for a consecutive mandate. The candidate for the function of director is selected based on a contest organized by the Legal committee for appointments and immunities of the Parliament, with the involvement of representatives from the civil society or the academic domain as observers.

NAC is a centralized and hierarchical unitary authority, consisting of a central office and regional subdivisions. The NAC has three regional subdivisions in Central, Northern and Southern regions of Moldova. Regional subdivisions are conducted by headmen appointed by the Director of the NAC, on a competitive basis.

The NAC has approximately 350 employees, out of which approximately 200 are dedicated to the repressive mandate of the NAC, in the investigative, operational and criminal prosecution activities. The EU peer-reviews of the NAC conducted in 2016 concluded that the NAC has sufficient staff to implement its mandate.

The staff and structure of the NAC are approved by the Parliament's decision. At the moment of preparing this part of the Assessment the structure of the headquarters of NAC was the following<sup>3</sup>:

- The leadership (Director and two deputy directors)
- General corruption prevention directorate
- General integrity assurance directorate
- Criminal Assets Recovery Agency
- General corruption combating directorate
- General criminal investigation directorate
- General security and human resources directorate
- General operative support directorate
- General analytical directorate
- Economic-financial and management directorate
- Service for prevention and combating money laundering (with the status of Directorate)
- Secretariat and archive unit
- Legal service
- Public Relations Service
- Internal audit service

*General corruption prevention directorate*

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<sup>3</sup> On 29 March 2018 the Parliament adopted the Decision No. 62 "On amendment of the Parliament Decision no.34/2016 on approval of the staff and structure of the National Anticorruption Centre", that came into force on 6 April 2018. According to this decision, the quantity of staff was reduced from 350 to 342 and the following structure of NAC was approved: Leadership (director, two deputy directors); General Division for Prevention of Corruption; General Division for Combatting Corruption; General Division of Criminal Investigation; General Division of Operational Support; Criminal Assets Recovery Agency (with status of division); Division of Professional Integrity Testing; Analytical Division; International Cooperation Division; Internal Security Division; Administration and Logistics Division; Guarding Division; Human Resources Section; Operational Management Section; Remuneration and Accounting Section; Archive and Secretariat Section; Legal Service; Public Relations Service; Internal Audit Service.



The mission of the directorate is to prevent corruption and develop strategic policies with the aim to curb this phenomenon. The basic functions of the directorate are:

- performing all measures, including those of educational character, necessary for preventing corruption; performing anti-corruption expertise of draft normative acts;
- organizing and participation at the drafting of normative acts with the purpose of modifying the regulatory framework according to national and international anti-corruption standards;
- informing the population on the corruption phenomenon, its illegal character, obtaining the public disapproval of corruption and the denouncement of corruption to competent bodies, anti-corruption education;
- ensuring and performing the Centre's prerogatives regarding the drafting, promotion, implementation and monitoring of national anti-corruption policies;
- *communicating with central and local administrative authorities*, with the civil society and the private sector with the purpose of preventing corruption;
- ensuring the process of drafting, implementation, monitoring and evaluation of the National Anti-corruption Strategy and the Action Plans for its implementation; carrying out the function of Secretariat of the Monitoring Group of the implementation of the National Integrity and Anticorruption Strategy.

#### *General integrity assurance directorate*

The basic functions of this directorate are:

- evaluation of corruption risks through identifying institutional factors favouring or predisposed to favour corruption, as well as the development of recommendations for their exclusion or the diminishment of their effects;
- performing the integrity testing within the public entities.

#### *General corruption combating directorate*

The Directorate is responsible for special investigation measures, with the purpose of efficiently combating corruption.

The basic functions of the directorate are:

- *to monitor the operative criminogenic situation* within the system of law enforcement bodies, central and local public administration, through the accumulation of operative information regarding corruption and related offences as well as acts of corrupt behavior, and the evaluation of the information and circumstances for the purpose of initiating investigation and to bring to account the persons found guilty;
- receive declarations, communications and other information regarding offences and their verification;
- *cooperation with other law enforcement bodies for the purpose of investigating crimes and exchanging information;*

- submit to the Centre's administration proposals for the optimization of methods and tactics for detecting and documenting offences within the competence of the General directorate.

#### *General criminal investigation directorate*

The main functions of the Directorate are:

- performing the criminal investigation and ensuring the implementation of the principles of legality, respecting the fundamental human rights and liberties and the opportunity in the criminal investigation activity of the Centre;
- preventing, detecting, researching and curbing offences which by Law fall under the Center's competence;
- ensuring the registration and monitoring of crimes and of the persons who have committed them;
- internal and external exchange of experience in the domain of the trial process;
- publicizing high level cases managed by the Centre and their results.

Aside from the responsibilities that directly evolve from the listed functions, the Directorate's competence covers the counteraction of corruption and protectionism, carrying out the monitoring and centralized registration of offences that fall under the Centre's competence and the persons who have committed them, exercising control over the use of information, *the general coordination between criminal investigation entities through organizing practical and methodical support within the activity of the criminal investigation subdivisions in the general territorial subdivisions and conducting the analysis of their activity*, ensuring the continuous training of criminal investigation officers and *ensuring the collaboration of the General Directorate with the Center's subdivisions, with other criminal investigation bodies, with public authorities, institutions and citizens.*

#### *General security and human resources directorate*

The general security directorate is responsible for ensuring the security of the institution, observance by NAC officers of the legal provisions and the rules of conduct (established in the Code of Conduct of NAC officers); The human resource division is a part of the Directorate and it is responsible for management of the human resources by planning, coordinating, organization, development, monitoring and evaluation of the implementation of the personnel procedures.

#### *Service for preventing and combating money laundering (with the status of Directorate)*

The basic tasks of the service are as follows:

- preventing and combating money laundering and the financing of terrorism;

- developing and implementing policies and strategies with the aim of preventing and combating money laundering and the financing of terrorism in the Republic of Moldova;
- coordinating and ensuring the implementation of the international standards in the domain.

#### *Directorate for operative support*

The Directorate is an independent structural subdivision of NAC, directly subordinated to the Director of the Centre and *working in close collaboration with the subdivisions of NAC*. It has the mission to prevent and fight corruption through investigative measures, to *ensure operational and technical special investigative measures* based on the principles of legality and impartiality, respecting the rights and freedoms of individuals, appropriateness and safety, combining public and secret methods and *cooperating with other state authorities*.

#### *General analytical directorate*

The Analytical Directorate is a structural subdivision, subordinated to the Director of the Centre. The mission of the Division is to conduct multilateral analysis of the models, trends and criminal situation on corruption offences, corruption related offences, as well as on acts of corruptive behavior. The division performs strategic and operational analysis. The activity of the Division of analysis, monitoring and assessment of policies is also performed within the General Analytical Directorate.

### **5.2.3. Functions and mandates in prevention and investigation of criminal acts of corruption**

Having analysed data of NAC Activity Report in 2017, it is clear that NAC as an institution with the key function of disclosure and investigation of corruption-type criminal activities, receives huge quantities of very diverse information on potential corruption-type activities or corruption-type legal violations. This information is received from various sources: written applications, complaints, petitions, telephone tips, etc. This number is increasing annually. To verify this information, various public and secret activities are required. Often information provided contains no indications of *corpus delicti* in its content or is not confirmed. A large share of reports are anonymous. Some tips are provided fully out of remit.

According to Articles 56, 253 and 269 of the CPC the criminal investigative body of the NAC shall conduct criminal investigation with regards to the crimes set forth in Articles 239-240 (Violation of Crediting Rules, Use of Means from Internal or External Loans Guaranteed by the State Contrary to their Purpose) 243 (Money Laundering), 279 (Funding Terrorism) and 324-335 of the CC, as well as to the crimes committed in relation to such crimes, with the exception set forth in this Code.

According to Article 135 of the CPC control of transmission or receipt of money, services or other claimed, accepted, swindled or offered material or nonmaterial values may be exerted only by the *investigative officers of the specialized subdivisions* of MIA and of the NAC.

According to Article 136 of CPC, NAC can use undercover investigation in order to discover the existence of a crime.

According to the NAC Activity report in 2017, the investigation officers of the NAC detected 881 crimes. Compared to the same period of 2016 (858), there was recorded an increase with 2.7 per cent of the total number of offenses detected. It should be noted that in relation to the previous years, there was found an upward trend of the total number of crimes detected by NAC officers.

As a result of special investigative actions, NAC officers identified the following categories of offenses:

- corruption and corruption-related actions - 698;
- money laundering offenses - 61;
- other categories of offenses - 122.

According to the criterion of seriousness of the detected offenses - 617 were particularly serious and serious, 227 less serious and 37 mild.

From the territorial point of view, 69% of the crimes were reported in Chisinau and districts from the central part of the country, 22% in Balti and northern districts of the country, and 9% in Cahul and in the southern districts.

Among the categories of corruption actions and corruption-related actions most frequently were committed:

- Trading in influence - 209;
- passive corruption - 151;
- Excess of power or exceeding of official authority – 91;
- Abuse of power or abuse of office - 89;
- Active corruption - 69 etc.

In 2017, 1939 criminal cases were led by the criminal investigative officers of the NAC.

In the proceedings there were 1149 cases, 722 - initiated by the criminal investigative officers, 52 – taken up, and 375 - received according to competence from other bodies.

The NAC report details that 881 crimes were detected in 1149 cases. This indicator is rather high, but it is considered that NAC should refuse to investigate cases of minor corruption in order to achieve greater efficiency in high-level corruption cases. In order to maximize the rate of disclosure of high-level corruption offenses in the lower

number of pre-trial cases NAC should also reduce the scope of investigations of other (unrelated to corruption) offenses. Given that 17% of all investigated crimes consisted of other categories of offenses, it is thought that redistribution of such criminal investigations to other LEAs would gradually purify the actual positions and the functions performed by the NAC for the investigation of corruptive crimes.

#### **5.2.4. Assets recovery**

The fight against organized crime and corruption has become in the last years a priority at the national and international agenda. It is generally accepted today that criminal justice systems cannot be considered efficient if they do not trace and recover the proceeds of crime in order to allocate them either to victims or to the State. The threat of recovery of illicit proceeds is one of the most effective deterrents against such crimes and thereby helps to prevent them in the first place: if criminals cannot expect to find a safe haven for their funds and assets in or outside their jurisdiction, the key motivator for their actions is frustrated. Asset recovery is a complex process encompassing several phases: detection, identification of assets for further their freezing and confiscation. Each one of these interconnected stages poses delicate legal questions. The international community has recognized the importance of asset tracing and recovery: The United Nations Convention Against Corruption considers the return of stolen assets one of its fundamental principles and requires its signatories to provide a factual and legal framework for effective recovery of assets. The European Union has introduced several legal instruments aimed at simplifying asset recovery and tracing – considered to be a strategic priority – across the jurisdictions of its member states. Directive (2014/42/EU), and Frame Decisions (2005/212/JHA, 2007/845/JHA, 2006/783/JHA, etc.) are aimed specifically at facilitating this process.

##### *Criminal Assets Recovery Agency (with status of division)*

In the Republic of Moldova the legal framework necessary for recovery of illicit proceeds is mainly regulated by the Law on Agency for Criminal Assets Recovery. Criminal Assets Recovery Agency (with status of division) is the main unit which operates with the search, identification and investigation and management of illicit proceeds in the stage of criminal investigation.

Criminal Assets Recovery Agency (with status of division) (hereafter -Agency) has the following tasks:

- to carry out parallel financial investigations and to draw up the protocol on the results of these investigations, as well as making the criminal assets temporarily unavailable, according to the CPC;
- to valuate and manage the criminal assets made temporarily unavailable;
- to keep the records regarding the criminal assets made temporarily unavailable, including based on the requests coming from competent authorities from abroad;

- to negotiate the repatriation of criminal assets, under the conditions set in art.13 par. (2);
- to carry out international cooperation and exchange of information with foreign competent authorities;
- to collect and analyze statistical data relevant to the crimes indicated in this law.

The Agency is an autonomous specialized subdivision within the NAC.

*Legislation regulating the activities. The scope of activities. Rights and duties.*

The Agency bases its activities on the Law on Agency for Criminal Assets Recovery (hereafter- the Agency Law) No. 48 approved on 30 March 2017, as well as CPC, CC, and other Moldovan legislation.

In accordance with the Agency Law, the Agency is engaged in the search and identification of illicit assets during criminal investigations whenever one or a number of crimes are intentionally committed, of which at least one is provided at the following articles 181<sup>2</sup>, 239-240, 242<sup>1</sup>-243, 279, 324-329, 330<sup>1</sup>, 330<sup>2</sup>, 332-335<sup>1</sup> and 352<sup>1</sup> from the CC, and in case of crimes committed by use of office, provided in articles 190 and 191 from the CC.

All the issues related to asset recovery could be applied to the civilly liable party, beneficial owner, and persons who have contributed to perpetrating the crime, irrespective of the participation form, in compliance with the provisions of the CC.

The Agency is empowered to:

- request and receive information and necessary documents for performing the duties of the Agency from the national and international entities holding such information and documents;
- decide upon freezing the criminal assets, which were identified on the basis of the written request from the foreign competent authorities;
- access free of charge the national databases in the activity it carries out.

The Agency for Criminal Assets Recovery has the following duties:

- to supply to the competent national, foreign and international authorities, as applicable, information and documents supporting the reasonable doubt regarding the perpetration of crimes and the criminal assets related to such crimes;
- to adopt guidelines and methodologies.

*Structure and organization*

The Agency is headed by a Head, appointed by the NAC Director. The Head of the Agency could be assisted by one deputy, appointed by the Director of the NAC, upon the proposal of the Head of the Agency.

According to the Agency Law within the Agency can work criminal investigation officers, investigation officers, experts, accounting and audit specialists other specialists.

The organization and functioning regulation, as well as the structure of the Agency, shall be adopted by the Head of the Agency.

### *Findings*

In accordance with the Agency Law, the main form of the procedural activity of the Agency is the parallel financial investigations, when officers of the Agency using criminal proceedings detect, identify illicit proceeds for further their freezing and confiscation.

The parallel financial investigations are set up only after pre-trial investigations are initiated and if a suspect is available. According to the Article 229<sup>2</sup> paragraph 1 of CPC, the general provision is that parallel investigations are carried out by the institution conducting pre-trial investigation. Only in the cases provided for by CPC, the performance of financial investigations shall be appointed to the Agency. According to the Articles 229<sup>2</sup> and 258 of CPC the Agency is obliged to carry out parallel financial investigations whenever one or a number of crimes are intentionally committed, of which at least one is provided at the following Articles 181<sup>2</sup>, 239-240, 242<sup>1</sup>-243, 279, 324-329, 330<sup>1</sup>, 330<sup>2</sup>, 332-335<sup>1</sup> and 352<sup>1</sup> of the CC, and in case of crimes committed by use of office, provided in Articles 190 and 191 of the CC. Such obligation is executed by the assignment of the subject of pre-trial investigation (pre-trial investigation officer or prosecutor). So the Agency should carry out financial investigations both for NAC and other law enforcement agencies. Financial investigations include criminal proceedings provided in CPC (data collection from databases, monitoring of financial transactions, search, etc.).

During the on-site mission to Moldova and interviews with the representative of the Agency, it was found that at that period only 8 persons were employed into the Agency. The Agency had around 100 orders to conduct financial investigations on legal and (or) natural persons. According to CPC (Art. 258 para. 3) a financial investigation has to be done within 60 days at the latest. Taking into account the number of staff and the scope of the investigations, this workload for the Agency is clearly too high. This was also mentioned by the representative of the Agency, as well. The representative stressed out that in the absence of the proper conduct of all financial investigations, part of them was postponed. The priority was given to investigations of the cases where suspects were under arrest, since the terms of financial investigations are directly linked to the terms of pre-trial investigation.

In the light of the above, it is recommended **providing the Agency with the sufficient human and financial resources for implementing the mandated functions.**

As it was mentioned above, a parallel financial investigation is carried out by the officer of the Agency under the request of the subject of pre-trial investigation. During the on-site mission, the coordination of cooperation between the officers of the Agency and pre-trial investigation officials was evaluated. It was determined that when the Agency receives an assignment for financial investigation, the Agency officer decides upon actions to be undertaken and their scope to fulfil the assignment. A financial investigation plan is usually drawn up. This plan is harmonized with the prosecutor organizing the pre-trial investigation, and the pre-trial investigation officer gets acquainted with the plan. However, it remains unclear how this coordination will take place, during the execution of the financial investigations, especially, if it is necessary, to carry out new proceedings with the participants of the process or to obtain additional data, when the procedural steps or data need to be taken at the place of pre-trial investigation. So it is recommended **strengthening further co-operation between the Agency and law enforcement institutions with a particular focus on tracing of assets and providing the follow-ups.**

After the revision of legislation concerning the activity of the Agency and on-site discussions with the representatives of the Agency regulatory gaps were found: in terms of coordination activities between prosecutors and officers of the Agency, and in terms of activities, where immediate actions are necessary to be carried out and the consent of prosecutor or the sanction of a judicial authority is needed. The general principle is that officer of the Agency coordinates actions with the prosecutor who leads the pre-trial investigation. But, as regards the prosecutor's role to the Agency, it is worth mentioning that the Agency carries out its functions inside the NAC and that the NAC's activities are coordinated by APO's prosecutors. In such circumstance it is worth **clearly defining the functions of the prosecutor in relation to the agency activities.**

In order to carry out a thorough financial investigation, it is necessary to obtain all the necessary data from the subject of pre-trial investigation. The assignment to Agency should be formulated properly. During the on-site mission to Moldova and discussions with the representatives of the Agency it was noticed that the assignments for financial investigations, as well as necessary data, are not exhaustively presented. There were indications that some officials are not fully clear about the agency's possibilities in terms of asset recovery. So it is necessary to **raise awareness about the Agency activities among relevant law enforcement institutions and agencies.** During the interviews with the representatives of different institutions empowered to carry out pre-trial investigations, it was identified that the knowledge on conducting financial investigations is generally limited. They generally lack understanding in the importance of financial profiling of perpetrators and their accomplices, and are thus unable to ascertain a complete picture of the nature and extent of the illegal assets that may be held in a particular case. The main focus in the investigation of criminal acts is given on the



identification of a crime and the collection of data on criminal activity. Issues related to financial part of the crime often remain beyond the scope of the investigation.

It should be noted that the Prosecutor General's Office issued an explanatory note (18<sup>th</sup> of April 2017, no. 11-3d/17-1854) drawing attention to the need to conduct parallel financial investigations in self-seeking crimes. According the Note, prosecutors are requested to ensure the conduct of the financial investigation in each criminal case in order to identify and seize the goods and financial means used for committing the crimes or resulted from crimes. The Note also outlines the main guidelines for focusing on the prosecution of criminal assets, but this is not enough to achieve an effective outcome.

As it was already mentioned, the Agency is mandated to conduct financial investigations for only 54 criminal activities. What concerns other crimes, financial investigations in these crimes are carried out by pre-trial investigation officers or prosecutors themselves. Therefore, in order to carry out a thorough financial investigation, it is necessary to **propose to the PGO drawing up recommendations for conducting financial investigations**. The recommendations should define the basis, objectives, and methodology of financial investigations, as well **establish procedures on The Agency operations**.

It worth also mentioning that an analysis of the former financial investigations, shortcomings and advantages have been identified, examples of success play significant role in the improvement of the current situation. Despite the fact that the Agency has been operating for 2 years, it is recommended to the GPO **drawing up guidelines for the best use of the Agency**, which could be included into the recommendations.

In accordance with the Agency Law, the Agency is mandated to deal with management of criminal assets made temporally unavailable. During the on-site visit it was defined that the execution of the management functions was pending. Notwithstanding to that, the draft of the regulation on the valuation, management and recovery of criminal (seized) assets were introduced to the experts. The regulations establish the principles, the organization and the performance of valuation, management and recovery of criminal assets by the Agency together with the Ministry of Finance.

Getting acquainted with the following regulation, it was found that the Regulations essentially ensure full management of the assets, including its sale and return of funds to the state revenues. So it is recommended that **the establishment of the Agency operations on the matters related with the management of assets were accomplished as soon as possible**.

#### **5.2.5. Decision making policy, internal procedures, interagency cooperation**

According to Article 3 of the Law on the NAC, one of the NAC's guiding principles is *<...> cooperating with other public authorities, with civil society organizations and members of the public*.

Most of the control and coordination functions are currently carried out by the NAC's director and deputy. According to the Article 9, NAC Director shall represent the Center in its relations with other public authorities in the country and with similar agencies from foreign countries, and shall initiate and sign cooperation agreements, under the conditions laid down by the law, with similar institutions from foreign countries.

From the information provided and staff surveys, experts have found that NAC has a unit - General criminal investigation directorate with one of its main functions to ensure inter-institutional co-operation (<...> *ensuring the collaboration of the General Directorate with the Center's subdivisions, with other criminal investigation bodies, with public authorities, institutions and citizens*). It was also found that inter-institutional co-operation carries virtually every Directorate in so far as it related to the direct functions.

It was found that NAC has cooperative agreements with other LEAs. Some agreements were submitted and evaluated by the experts. For example, Cooperation Agreement between MIA and NAC. According to this agreement parties shall collaborate in the following areas:

- prevention of corruption;
- finding, investigation and combatting the crimes of corruption and those related to corruption, actions of corrupt behavior;
- prevention and combatting money laundering and terrorism financing and other.

The collaboration is conducted through exchange of information, documents and statistical data, exchange of experience, organization of meetings, seminars and training courses. However, the experts couldn't identify, how this agreement is implemented in practice.

Some other agreements were not available for experts because they are secret and not publicly disclosed. For example, the Secret Law on the Distribution of Operational Functions. As a result, experts could not properly assess their functionality and benefits.

Experts noticed that interagency cooperation among anti-corruption and law enforcement institutions is formally set up but there is room for improvements in the effectiveness and in the mechanisms. There is the need to establish clear working arrangements between NAC and all LEAs as well as to review the agreements between NAC and other institutions in the field of investigation of criminal cases of corruption. It was noticed, that sometimes exchange of information is done through official exchange of letters rather than regular meetings of all institutions involved in the fight against corruption. Experts think, that a full assessment of the situation for national cooperation and coordination, including an analysis of the impact of the current lack of domestic coordination, has never been undertaken and becomes highly recommendable.

### **5.2.6. Independence**

The independence of the law enforcement institution is closely linked to the grounds for dismissal of the head of this institution. Such grounds for dismissal must be clear, unambiguous and substantiated. The heads of law enforcement authorities should not be changed when changing the political power in the country and for objective reasons in the absence of such change. It is advisable to assess the legal provisions establishing the grounds for dismissal of heads of NAC's leadership.

### **5.2.7. Findings**

Having assessed the structure of NAC and the performance of separate Directorates, it was understood that the current governance model is in line with international standards but could still be refined. The exchange of the necessary information between the Directorates and Divisions is carried out directly, and, if necessary, through the management of the NAC. Meetings of the heads of Directorates are regularly organized for the important management issues and decision-making. Despite the smooth organization of work, experts have noted that the functions of certain Directorates are not clearly defined, sometimes dubbing in practice. Some Directorates have lack access to information for their direct functions. For example, General analytical directorate currently has no access to operational information, although, as the practice shows, knowing such information helps to create better analytical findings. As a result, experts believe it would be useful to carry out a detailed assessment of the functions performed by the NAC's structural units, to eliminate overlapping functions and to identify only those functions that departments actually carry out.

## **5.3. Ministry of Internal Affairs**

In accordance with the extensive scope of the legal framework on prevention and combating corruption in Moldova, a number of authorities exercise duties of preventing and combating corruption by implementing policies and practices in this field. A respective role among these institutions is vested to the Ministry of Internal Affairs of Moldova (hereinafter - MIA).

MIA is one of the nine ministries of the Government of Moldova and is the key authority in managing the system of domestic affairs bodies.

The main role within the MIA in assuring the preventing and combating of corruption acts and those related to corruption, acts of corrupt behavior, conflicts of interests in which the employees of the heads of the MIA, administrative authorities and institutions subordinated to the Ministry could be involved, other integrity mechanisms is attributed to the Anticorruption and Internal Protection Service of the MIA (hereinafter - SPIA).

The SPIA has the following basic missions:

- Preventing and combatting corruption and corruption related acts, acts of corrupt behavior, conflict of interests;

- Internal protection against threats, vulnerabilities and risks that can endanger the security of the internal affairs system, surveillance and making sure that the legislation and discipline at work are respected by the staff of the administrative system of the MIA;

- Protecting the information referred to as state secret and monitoring the secret regime to be respected.

According to the Activity Report of the SPIA for the year 2017, in accordance with the provisions of the Actions Plan of the Ministry of Internal Affairs for the year 2017, approved by the Order of Minister of Internal Affairs of the Republic of Moldova No. 82 as of 24.03.2017 as well as the activity plan of SPIA, the activity of the SPIA was focused on the following priority directions:

- Prevent corruption and corruption related acts;

- Combat corruption and corruption related acts;

- Ensure the internal protection of the MIA, administrative authorities and institutions subordinated to the MIA;

- Monitor the compliance with the legislation and discipline of work by the employees of the MIA;

- Ensure the protection of information referred to as state secret and ensure that the secret regime is respected within administrative authorities and institutions subordinated to the MIA;

- Monitor the lifestyle of the MIA employees;

- Manage the specialized anti-corruption lines;

- Implement the VLAP Policy Matrix;

- Implement the Budget Support for Police Reform 2016-2020;

- Professional training of SPIA employees.

### **5.3.1. Legislation regulating the activities**

The SPIA was created under the provisions of the Government Decision No. 778 as of 27.11.2009 „Approval of the Regulation on Organization and Operation of the Ministry of Internal Affairs, structure and the established number of the staff of its central subdivision” with amendments and additions made through the Government Decision No. 995 as of 12.12.2013.

The main document which regulates the mission, basic functions, attributions, competences, rights, organization and operation of the SPIA is the Regulation on organization and operation of the Anticorruption and Internal Protection Service of the Ministry of Internal Affairs (hereinafter – Regulation), approved by the Order of the Minister of Internal Affairs of the Republic of Moldova No. 300 as of 15.10.2014.

The SPIA operates in accordance with the Constitution of the Republic of Moldova, the CPC, the CC, the Law on SIA, Order on Approval of the Disciplinary

Regulation of the Public Servant of MIA; Law on the Verification of Holders and Candidates to Public Office positions; Order on Approval of the Disciplinary Regulation of the Public Servant of MIA; Regulation on Monitoring the Life Style of the Public Servant; Integrity Law, other legislation and normative acts in force, international treaties to which the Republic of Moldova is a party, etc.

The SPIA exercises its functional attributions both in relation to the headmen of the MIA, administrative authorities and in relation to the institutions subordinated to the Ministry.

### **5.3.2. Structure and organization**

The SPIA is a specialized subdivision of the MIA in the field of internal protection, prevention and combatting corruption, according to the above-mentioned legislation in force.

It constitutes a superior hierarchical structure in relation to other internal subdivisions of protection of information labelled as state secret, created within the administrative authorities and institutions subordinated to the MIA, exercising the monitoring and surveillance of their activity.

The SPIA is subordinated to the Ministry of Internal Affairs.

The organizational structures and the staff of the SPIA shall be approved by the Minister of Internal Affairs.

The divisions of the SPIA are the following:

- Internal security division;
- Combatting of corruption division;
- Prevention and Operational management division;
- Protection of Information division;
- Strategic Insurance division;
- Analytical division;
- Special technical unit;
- Public Relations service;
- Secretariat.

The staff of the SPIA consists of civil servants with special status, to whom the status of policeman is applied, according to the provisions of Law No. 320 as of 27.12.2012 on the activity of Police and status of the policeman, as well as technical service staff.

According to the Activity Report of the SPIA for the year 2017 and to the organization chart, the number of personnel established is of 100 employees, 98 of them have a special status and 2 are technical servants. The positions are occupied 91%, 9 positions are vacant with special status. At the same time during the year 2017, 6 persons

were seconded to other subdivisions of the headquarters or administrative authorities subordinated to the MIA. During the visit to the SPIA, experts were told that 2 criminal investigative officers of the SPIA were seconded to the specialized prosecutor's office. According to the regulation, the investigative officers subject to transfer shall be individually selected on the basis of some criteria established by the Activity regulation of the Specialized Prosecutor's Office. The transfer shall be made upon the written consent of the selected investigative officer, by common order of the General Prosecutor and the head of authority the transferred investigative officer works in (Article 9 Paragraph 6 of the Law on SIA, Article 9 Paragraph 6 of Law on the Prosecutor's Office).

The SPIA is led by a headman, appointed and dismissed by the order of the Minister of Internal Affairs. The headman of the SPIA shall be assisted by a deputy chief, appointed and dismissed by the Minister of Internal Affairs.

The headmen of divisions shall be directly subordinated to the headman and deputy headman of the SPIA and directly to the Minister of Internal Affairs. The headmen of divisions shall be assisted by deputy headmen of the divisions, headmen of units, appointed and dismissed by the Minister of Internal Affairs.

The headman of the SPIA:

- Performs the management of the SPIA;
- Ensures the execution of functional competences of the SPIA, legal provisions and directions of the MIA leadership;
- Distributes the responsibilities of employees of the SPIA and controls the tasks and obligations to be executed by them;
- Ensures the subordinated staff to attend a professional training;
- Evaluates the professional performances of the employees of the SPIA;
- Submits to the minister proposals on the stimulation of the subordinated staff or, where appropriate, within the limit of competency, application of discipline sanctions regarding them;
- Proposes to the minister to improve and organize the activity of the SPIA;
- Fulfils other functions attributed by the normative acts in force and/or directions of the minister.

The headmen of divisions/units shall:

- Manage the divisions/units;
- Ensure that the functional competences of the divisions/units, directions and legal provisions of the SPIA and MIA leadership are executed;
- Distribute responsibilities to the employees of the divisions/units and control that the tasks and obligations are executed by them;
- Propose to the headman of the SPIA improvement and organization of the activity of directorates/units;

- Perform other positions attributed by the normative acts in force or/and directions of the minister.

### **5.3.3. Functions and mandates in prevention and investigation of criminal acts of corruption**

According to Article 56 of CPC, MIA is one of the criminal investigative bodies in Moldova. According to Article 55, 56 of CPC appointed criminal investigative officers of the MIA shall conduct criminal investigations. MIA shall also undertake all necessary measures to prevent and to suppress the crime (Article 55 Paragraph 3 of CPC).

Below there are key divisions according to the approved structure of the SPIA which within the limits of competence carry out the functions and mandates in prevention and investigation of criminal acts of corruption, i.e. Combatting of corruption division, Protection of Information division, Prevention and Operational management division.

The main competences of *Combatting of corruption division* are:

- to ensure, within the limits of competence, the fight against corruption and corruption related acts, acts of corrupt behavior, conflicts of interest in which the employees of the headquarters of the MIA, administrative authorities and institutions subordinated to the Ministry could be involved;

- to perform the special investigative activity, within the limits of competence, according to the legislation;

- to conduct, according to the competences, activities of detection, prevention, stopping and investigating the actions of corruption and corruption related acts, acts of corrupt behaviour, conflicts of interest in which the employees of the headquarters of the MIA, administrative authorities and institutions subordinated to the Ministry could be involved;

- to ensure a prompt response to the referrals, communications and other information about the actions of corruption and corruption-related acts, acts of corrupt behavior, conflicts of interest in which the employees of the headquarters of the MIA, administrative authorities and institutions subordinated to the Ministry could be involved;

- to provide the necessary support to the prosecutor's office and prosecution bodies within criminal proceedings.

The main competences of *Internal Security Division*:

- to conduct measures for the identification, prevention and hindering of risks, threats and vulnerabilities liable to compromise the security of the MIA, administrative authorities and institutions subordinated to the Ministry;

- to perform the special investigation activity, within the limits of competency, under legislation;

- to perform activities of collection and processing of information necessary for ensuring the internal protection of the MIA, other authorities, institutions subordinated to the Ministry;

- to conduct activities of detection, prevention, ending and investigation of illegalities committed by the employees of the headquarters of the MIA, administrative authorities and institutions subordinated to the Ministry, within the limits of competence, under legislation;

- to ensure the prompt reaction to referrals, communications and other information about illegalities committed by the employees of the headquarters of the MIA, administrative authorities and institutions subordinated to the Ministry;

- to provide the necessary help to the Prosecutor's Office bodies and criminal investigation bodies within criminal proceedings;

- to organize and monitor the life style, within legislation in force; etc.

The main competences of the *Prevention and operational management division*:

- to identify and evaluate the institutional vulnerabilities and risks of corruption;

- to organize and coordinate the actions of preventive nature regarding the competence of the SPIA;

- to monitor and submit proposals of implementation of sectoral and national policies documents in the field of internal protection, prevention and combatting of corruption;

- to ensure the methodological assistance regarding the competence of the SPIA;

- to examine the drafts of the administrative acts (orders, provisions, etc.) submitted for signature to the head of the MAI in order to avoid corrupt influences and conflicts of interest;

- to propose to the minister of internal affairs the improvement of the normative framework and solutions for removing the shortcomings, risks, threats and vulnerabilities found in the activity of the MIA, administrative authorities and institutions subordinated to the Ministry, according to the competency; etc.

Competence of the criminal investigative body of the MIA is determined in Article 266 of CPC that says that criminal investigative body of the MIA shall conduct criminal investigations of any crime not referred by law to the competence of other criminal investigative bodies or referred to its competence by an order of a prosecutor. According to Article 270 (2) of CPC, criminal investigation in cases when it is conducted by the criminal investigative body with the competence on the entire territory of the Republic of Moldova, mentioned in Article 266, is managed by the specialized Prosecutor's Office - Prosecutor's Office for Combating Organized Criminality and for Special Cases. During the visit to the SPIA, it was referred that in practice besides the mentioned specialized Prosecutor's Office they deal with the APO and territorial prosecutor's offices.



It must be noticed that according to CPC criminal investigative body of the MIA (SPIA) may not perform criminal prosecution activities regarding corruption investigations on their own as it is the competence of the NAC (Article 269 of CPC) or prosecutor's, generally – the APO (Article 270, 270(1) of CPC). According to the regulation, if the elements of corruption acts are detected by the SPIA, such information is transmitted to the NAC or to the APO. The representatives of the SPIA expressed the opinion that the criminal investigative body of the SPIA, taking into account the human resources and competences after passing the trainings, could be able to investigate small-scale corruption acts within the MIA, administrative authorities and institutions subordinated to the Ministry. On the opinion of experts, such issues on the expansion of competences of the MIA related to the prosecution activities regarding small-scale corruption investigations in the future could be under the consideration. Such is the European practice. For example, in Lithuania each department under the Ministry of Internal Affairs (MoI) includes a unit ensuring internal security that can carry out criminal prosecution and is a criminal intelligence entity as well. The Lithuanian Police Department is among the largest agencies of MoI, with close to 10,000 police officers and staff. Since 2011, the Immunity Board is established in it. Besides other functions one of them is conducting of pretrial investigations related to corruption. In 2017 47 pretrial investigations were initiated regarding corruption activities by officers. It should be mentioned that an investigator of Police Department Immunity Board shall have the right to carry out pretrial investigations regarding potential corruption type and/or other criminal activities of police employees, as well as criminal activities against such employees, and adopt resolutions to deny initiation of pretrial investigations.

According to the Activity Report of the SPIA during the year 2017, the SPIA subdivisions initiated at all 181 criminal cases (during the year 2016 - 228), from which related to corruption: Article 324 of CC (Passive corruption) – 19 (2016 - 62), Article 325 of CC (Active corruption) – 19 (2016 - 34), Article 326 of CC (Traffic of influence) – 30 (2016 - 31), Article 327 (Abuse of power or abuse of office) and Article 328 (Excess of power or excess of official authority) of CC – 27 (2016 - 30).

Also, the employees of the criminal investigative body of the SPIA were included in working groups in relation to 47 criminal cases (Article 10 of Law on SIA).

As it is stated in the Activity Report, during the year 2017 the approach of the process of documentation of cases of corruption was changed, with emphasis on the qualitative and complex investigation of the phenomenon, as a whole, which had previously been examined only by means of an action separately found.

If there is any doubt as to whether detected actions lead to criminal liability or do not exceed the limits of disciplinary violation, the investigation officers of the SPIA can carry out special investigative measures, prescribed in the Law on SIA. However, according to the Article 18 of the Law on SIA, as it was mentioned above there are only

three measures within the competence of the SPIA, that could be made outside the criminal proceedings: a) interrogation; b) collection of information about persons and facts; c) identification of the person. Some other special investigative activities can be conducted under the authorization of the examining magistrate or prosecutor and most of all within the criminal proceedings only.

During the year of 2017 the Internal Security Division of SPIA, within the limits of competence, examined 1287 referrals, inquiries, petitions and others materials where the citizens have claimed the allegedly illegal actions of the employees from the administrative authorities and institutions subordinated to the MIA, most of which related to the activity of the Police. Most often citizens complained on non-performance of professional obligations, failure to respond promptly to referrals of citizens and a lack of professionalism in solving therein; unjustified initiation of criminal and contravention proceedings, as well their non-objective examination; acts of corruption and those related to corruption, acts of corrupt behavior; etc. As a result of the service inquiries 25 sanctioning orders were drawn up and in relation to 67 employees of the MIA (most of them - policemen) were imposed with disciplinary sanctions.

There were lots of prevention activities carried out by the SPIA in 2017: in total 2554 employees of administrative authorities and institutions subordinated to the MIA were trained, there were organized special measures in order to raise awareness of public and of the MIA staff, several social video spots have been released, through which anticorruption messages were transmitted as well as the importance of raising awareness of the need to promote an anticorruption culture and to adopt an honest behavior, the Anticorruption and Internal Protection Service ensured the management of specialized anticorruption lines with the short number 1520 and (022) 26-11-12, etc. In this respect, it is worth mentioning that due to some systematic prevention actions combined with those of combatting corruption conducted by the SPIA, over the past years, the strengthening of institutional integrity has been ensured, which in turn has conditioned the growth of the level of trust in employees of the Ministry of Internal Affairs on behalf of citizens.

During the visit representatives of the SPIA indicated good international cooperation with Romania under the signed agreement. And at the national level in the sphere of combating corruption the NAC and the APO were indicated as the institutions with which the SPIA have to cooperate most.

The experts got acquainted with the cooperation agreement, signed between the MIA and the NAC on 10.02.2016. It states that Parties collaborate in the following areas:

- prevention of corruption;
- finding, investigation and combatting the crimes of corruption and those related to corruption, actions of corrupt behavior;
- prevention and combatting money laundering and terrorism financing;

- combating the cross-border and organized crime;
- recording and keeping records on felonies;
- formation and common adjustment of the legal framework that regulates the areas of competence of Parties;
- development and implementation of sectoral and national policy documents;
- protection of human rights;
- protection of personal data;
- preserving the state secret and ensure the information security;
- ensuring internal security.

The collaboration shall be conducted through exchange of information, documents and statistical data; provision of specific consultations; exchange of experience; provide methodological and practical support in the areas of collaboration; organization of meetings, seminars and training courses; commonly conduct the measures of prevention and prophylaxis of offences; commonly conduct the activity of investigation.

It should be mentioned the notice of experts who visited all beneficiaries of this project that there are quite many agreements between LEAs but in practice there is lack of real cooperation including mutual trust between them. Sharing of information between separate offices seems to be too declarative and it should be improved. Dispose of information in real time is very important element fighting against corruption and effectively performing investigations.

#### **5.3.4. Decision making policy and internal procedures**

If a crime is detected or there is found reasonable suspicion related to the commission of a crime directly by an employee of a criminal investigative body (a criminal investigative officer, an employee of the verification bodies (the police, the Border Police, the NAC, the Customs Service) or the prosecutor, CPC obliges them to register the crime in order to initiate criminal investigation (Article 262 Paragraph 3, Article 265 Paragraph 3 of CPC).

The criminal investigative body or the prosecutor is obliged to verify its competence (Article 271 Paragraph 1).

Should a criminal investigative body state that it is not competent to conduct a criminal investigation, it shall immediately, however, no later than within three days, send the case to the prosecutor managing the criminal investigation who shall send it to a competent body (Article 271 Paragraph 2 of CPC). In such case a criminal investigative body shall be obliged to perform any urgent criminal investigative actions. The transcript of the actions performed in these cases shall be attached to the respective case file sent to the prosecutor in line with the provisions (Article 272 of CPC).

According to Article 273 of CPC the bodies shall be entitled in line with the CPC to capture perpetrators, to seize material evidence, to require the information and documents necessary to establish the crime, to summon persons and to obtain declarations from them, to assess damage and to perform any other urgent actions <...>. Establishing acts issued in line with the mentioned with other material sources of evidence shall be sent within 24 hours by the official examining bodies to a prosecutor in order to initiate a criminal investigation. And if the person is arrested all material shall be sent to the criminal investigative body or to the prosecutor immediately or no later than within three hours from the moment the person was de facto captured.

As it was mentioned, according to Article 270 (2) of CPC, criminal investigation in cases when it is conducted by the criminal investigative body of MIA with the competence on the entire territory of the Republic of Moldova is managed by the specialized Prosecutor's Office - Prosecutor's Office for Combating Organized Criminality and for Special Cases. So, according to the above-mentioned regulation if the criminal investigation related to corruption crime is initiated by the SPIA, a criminal investigative officer of the SPIA must perform urgent actions if it is necessary and taking into account that SPIA is not competent to conduct a such criminal investigation no later than within three days send the case to the prosecutor of the Prosecutor's Office for Combating Organized Criminality and for Special Cases. Investigation of corruption related crime is the competence of the NAC and the APO. According to the Article 271 Paragraph 9 of CPC, the conflict of competences between specialized prosecutor's offices shall be settled by the Prosecutor General. So, in above mentioned situation prosecutor of the Prosecutor's Office for Combating Organized Criminality and for Special Cases in line with the provisions of CPC corruption related case initiated by the SPIA shall send to the General Prosecutor's Office to settle the conflict of competences between specialized prosecutor's offices.

During the on-site visit to the SPIA it was clarified that in practice if there is an urgent situation when the elements of corruption crimes are detected by the SPIA, as soon as possible this information within the competence is transmitted to the APO or the NAC. For example, if the SPIA gets an information about the corruption related crime in the North of Moldova, SPIA contacts Northern subdivision of NAC and transmits this information with no taken active investigative actions. Taking into account that SPIA for now is not competent to investigate these crimes such cooperation when the information as soon as possible is transmitted to the competent authority considered as proper.

The process of initiating a criminal investigation is regulated by the Article 274 of CPC.

A criminal investigative body shall decide within 30 days in an order to initiate the criminal investigation provided that a reasonable suspicion that a crime has been committed and absence of circumstances excluding the criminal investigation result from

the notification or from the establishing acts. The order to initiate a criminal investigation issued by a criminal investigative body, as it was mentioned, within 24 hours from the date the criminal investigation was initiated shall be brought in writing to the knowledge of the prosecutor managing the criminal investigation activity, in this case to the Prosecutor's Office for Combating Organized Criminality and for Special Cases. The respective case file shall be also submitted. Should the prosecutor establish that there are no circumstances preventing the initiation of the investigation, he/she in line with the provisions of the CPC shall send a case to the General Prosecutor's Office to settle the conflict of competences. Settling of conflict of competences is mentioned above.

Should the prosecutor refuse to initiate a criminal investigation, he/she shall confirm the refusal in a reasoned order and shall notify thereof, as soon as possible, however not later than within 15 days, the SPIA. Should the prosecutor consider that there are no grounds for initiating a criminal investigation, he/she shall abrogate the order to initiate the criminal investigation and shall decide to refuse to initiate the criminal investigation and terminate the criminal proceeding.

It must be noted that according to the above-mentioned regulation in CPC there is some conflict regarding competences of specialized prosecutor's offices when they deal with corruption related crimes. When the SPIA refuses to initiate a criminal investigation regarding corruption related crime, this decision is examined by the prosecutor of Prosecutor's Office for Combating Organized Criminality and for Special Cases that has no competence to deal with this kind of cases. And when there is initiated a criminal investigation, the case in line with the provisions of CPC by the prosecutor of Prosecutor's Office for Combating Organized Criminality and for Special Cases should be sent to General Prosecutor's Office to settle the conflict of competences. On the opinion of experts for the effective investigation of this kind of crimes the organization, leading of pretrial investigations should be reconsidered. It must be noted that competent prosecutor's as playing a leading role in investigating corruption early involvement into investigation allows increasing quality of cases.

#### **5.3.5. Independence**

The principle of independence when investigating criminal cases should be perceived not as some sort of a privilege but rather as an obligation and – first and foremost – a requisite condition securing the protection of human rights and freedoms as well as trust in law enforcement. The essence of this principle is that LEAs shall investigate matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

The CPC rules that criminal investigative officers shall be independent and shall follow the law and the written orders of the prosecutor. The status of a criminal investigative officer shall be established by law (Article 253 of CPC).

A criminal investigative body shall be obliged to undertake all the measures provided by law to comprehensively, completely and objectively investigate case circumstances in order to find the truth (Article 254 of the CPC).

As it was mentioned before, the SPIA is subordinated to the MIA.

This specialized subdivision is led by a headman, appointed and dismissed by the order of the Minister of Internal Affairs. The deputy chief of the SPIA is appointed and dismissed by the Minister of Internal Affairs as well.

The headmen of divisions are directly subordinated to the headman and deputy headman of the SPIA and directly to the Minister of Internal Affairs. The deputy headmen of the divisions, headmen of units appointed and dismissed by the Minister of Internal Affairs.

Even though all heads and deputies of the SPIA are appointed and dismissed by the Minister of Internal Affairs, who is the politician, during the on-site visit the representatives of the SPIA assured that there is no any intervention into the SPIA investigations.

It must be noted that it is very important investigating especially corruption related crimes that there should not be any assumptions for doubts about influence or possible partiality.

On the opinion of experts present regulation related to the appointment of heads of the SPIA divisions/units should be reviewed. It is recommended to strengthen the decisive influence of the head of the SPIA in the selection, appointment, promotion process of heads of the SPIA divisions/units.

According to the Article 41 of the Law on SIA the special investigative activity is coordinated by the Coordination Council, created by the General Prosecutor. The Coordination Council consists of General Prosecutor and leaders of the specialized subdivisions. It conducts its activity on the basis of Council Regulation to coordinate the special investigative work approved by the General Prosecutor's Order No. 82/6 on the 30 of November 2012. The Coordination Council is an advisory body created to coordinate the special investigative work carried out by specialized subdivisions. The Council coordinates the special investigative activity, promotes the exchange of experience between the authorities carrying out the special investigative activity in order to improve and take over the best practices in the given field, contributes to the cooperation between the specialized subdivisions and the criminal prosecution bodies in order to increase the effectiveness of the actions for preventing and combating crime and organized crime, conducts other special tasks.

Representatives of the SPIA noted that the SPIA at the Coordination Council is represented by the vice-minister of the Internal Affairs. On the opinion of experts

representation of the SPIA at the Council should be reconsidered involving participation at the meetings of the head of the SPIA/specialized subdivision conducting special investigative activity. Namely practitioners leading subdivisions responsible for the conducting special investigative activities should be present at the Council.

### **5.3.6. Findings**

Prevention of corruption related crimes is a key tool, along with criminalization and law enforcement, to fight corruption. While numerous policies and legal and institutional measures to prevent corruption and enhance integrity are developed, their effectiveness and practical implementation remain important challenges

The competences of the MIA and the GPI in performing disciplinary investigations should be clearly allocated.

Lots of prevention activities carried out by the SPIA in the recent years. Due to some systematic prevention actions combined with those of combatting corruption conducted by the SPIA, over the past years, the strengthening of the institutional integrity has been ensured, which in turn has conditioned the growth of the level of trust in employees of the MIA on behalf of citizens.

Nevertheless, it should be mentioned that even though the NAC, MIA and the GPI performs discrete corruption prevention measures, the whole activity in this field should be more coordinated in effective way in the sense of reducing corruption.

The SPIA has no competence to investigate corruption crimes committed within the headquarters of the MIA, administrative authorities and institutions subordinated to the Ministry. Even small-scale corruption cases exclusively are investigated by the NAC, the APO. The expansion of competences of the MIA related to the prosecution activities regarding small-scale corruption investigations in the future should be under the consideration. Such is and European practice. In this regard, the APO/NAC should focus on high-level corruption and strengthen its capacities in the fight against it.

On the opinion of experts legal regulation related to the ruling of transfer from one specialized prosecutor's office to another of corruption related crimes initiated by other than the NAC, the APO, official examiners, isn't effective in investigating corruption.

The conflict of competences of specialized prosecutor's offices when they deal with corruption related crimes exist. For the effective investigation the organization, leading of pretrial investigations should be reconsidered. Competent for the investigation of corruption related crimes prosecutor's as playing a leading role in investigating corruption early involvement into investigation allows increasing quality of cases.

There are quite many signed agreement between law enforcement agencies but in practice there is lack of real cooperation including mutual trust between them. Sharing of

information between separate offices seems to be too declarative and it must be improved. Dispose of information in real time is very important element fighting against corruption and effectively performing investigations.

Decision-making process should be improved.

Present regulation related to the appointment of heads of the SPIA divisions/units should be reviewed. It is recommended to strengthen the decisive influence of head of the SPIA in selection, appointment, promotion process of heads of the SPIA divisions/units.

Representation of the SPIA at the Coordination Council should be reconsidered involving participation at the meetings of the head of the SPIA/specialized subdivision conducting special investigative activity.

Skills and personal qualification of anti-corruption investigators and prosecutors is key to successful and unbiased anti-corruption investigations. Experience, competences and knowledge of all agencies participating in investigating corruption related crimes should be consistently improved.

The use of media to influence public opinion and put pressure on anti-corruption investigations is an important concern in lots of countries. It is important that anti-corruption investigating and prosecuting institutions proactively inform mass media. The latter play an important role in prevention, raising awareness and building public trust in law enforcement.

Only improved common efforts reasoned by real inter-institutional cooperation and mutual trust to combat corruption, to increase transparency in decision-making process, to reduce bureaucracy significantly could improve results in fight against corruption and respect the rule-of-law.

#### **5.4. General Police Inspectorate**

The reform of the Police is one of the major goals of the Moldovan Government which pursues to increase the efficiency of Police and the level of the population's trust in Police. The Police Development Strategy 2016-2020 aims at establishing a Police force serving the interests of citizens and community. This document sets the reform direction the Police should follow during the upcoming years with a focus on modernization of Police operation, increasing efficiency, accountability and transparency, strengthening the crime response capacities and mainstreaming the respect for human rights in Police activity.

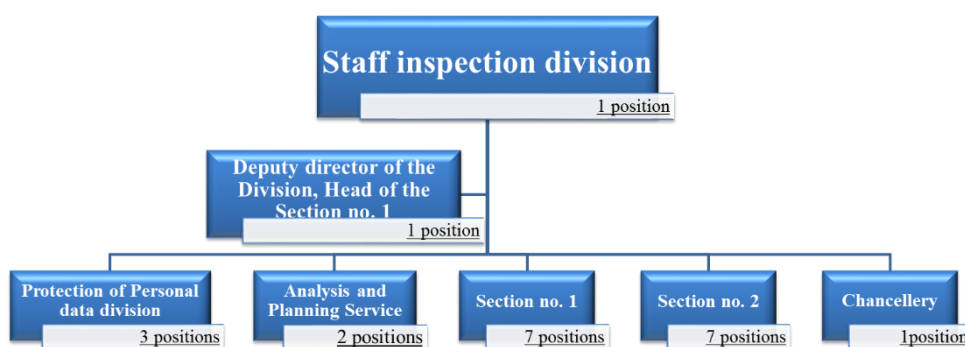
General Police Inspectorate (GPI) is a public institution under the MIA, which has the mission to defend the rights and freedoms of the person through activities of maintenance, insurance and restoring of public order and security, the prevention, investigation and discovery of offenses and contraventions.



#### 5.4.1. Legislation regulating the activities

The activity of GPI is regulated by the provisions of the Government Decisions No. 283 from 24.04.2013. As well, the Action Plan for the implementation of the National Strategy for Combating Organized Crime for 2011 – 2016 (was extended) approved by Government Decision No. 262 from 04.04.2014, includes the objective “Combating money laundering” and special actions to be taken for its achievement.

#### 5.4.2. Structure, organization, functions and mandates in prevention and investigation of criminal acts of corruption



#### Regulation on organization and operation of the Staff Inspection Division of the GPI of the MIA (with status of general division)

##### *General Provisions*

1. The Regulation on the organization and operation of the Staff Inspection Division establishes the mission, functions, duties, rights, obligations, as well as its organization and operation.

2. The Staff Inspection Division (hereinafter referred to as the Division) is the specialized subdivision of the General of Police Inspectorate (hereinafter GPI), with the status of General Division, empowered to ensure the surveillance, control of compliance with the legislation and work discipline, prevention and combating of corruption, corruption related acts and acts of corrupt behavior among its employees.

3. The Division is directly subordinated to the head of GPI.

4. The staff of the Division is made up of civil servants with special status.

5. The employees of the Division have the status of investigative officers, who perform the special investigative activity in accordance with the provisions of the Law on special investigative activity no. 59 as of March 29, 2012, the Criminal Procedure Code and other regulations in force.

6. The Division operates in accordance with the Constitution of the Republic of Moldova, Law no. 320 as of December 27, 2012 on the activity of Police and status of the policeman, Law on the Special Investigative Activity no. 59 as of March 29, 2012,

Criminal Procedure Code, Regulation on the organization and operation of the General Police Inspectorate of the Ministry of Internal Affairs, approved by the Government Decision no. 283 as of April 24, 2013, to other regulations in force, as well as to the provisions of this Regulation.

7. The Division exercises its functional responsibilities both in relation to the GPI at central level and at the level of subdivisions subordinated to it.

8. For the purpose of this Regulation, other information is understood as any written or verbal communications regarding GPI employees that do not fall under Law no. 190-XII as of 19 July 1994 on petitions.

*Mission, Basic Functions, Competences, Rights and Obligations of the Division*

9. The mission of the Division is to supervise and control the observance of legislation and work discipline by GPI employees, to ensure security, integrity, respect for the rights and legitimate interests of Police employees, protect their dignity, in relation to the execution of their functional competences, carry out the necessary measures to prevent and counteract offenses, contraventions, conflicts of interest and disciplinary deviations in which they are involved, to investigate and conduct appropriate steps in order to eliminate the causes and conditions that favored police officers to commit disciplinary deviations and illegal deeds, as well as to fortify the work discipline.

10. In order to accomplish the mission in its area of competence, the Division has the following functions:

- a) supervision and control in the field of compliance with the legislation and work discipline by the employees of the GPI;
- b) to prevent and combat, within the limits of competence, corruption and corruption-related acts, acts of corrupt behaviour in which GPI employees may be involved;
- c) to verify the professional integrity of GPI employees;
- d) to prevent and eradicate the confidentiality of GPI activity on behalf of its employees, leakage of service information, surveillance and control over the observance of the secret regime, protection of the service information and those assigned as state secret within the GPI;
- e) to analyse risks that may compromise safety of GPI.

11. Based on the basic functions, the Division has the following competences:

- a) examine the petitions submitted to the GIP regarding the actions of employees, according to competence, the directions of the head of the GPI, as well as those addressed directly to the Division;
- b) performs inquiries on increased resonance cases;
- c) performs planned and unannounced controls in order to verify compliance with the legality and work discipline by GPI employees;

- d) performs special control of candidates at employment and promotion within GPI;
- e) performs the special investigative activity in accordance with the legislation in force;
- f) shall submit proposals to the head of the GPI to settle the gaps identified in the GPI activity;
- g) provide assistance in the development and implementation of policies in the field of ensuring compliance with the legislation in force, work discipline and combating corruption among GPI employees;
- h) cooperate with GPI subdivisions of MIA as well as other law enforcement agencies in the field of ensuring compliance with legislation and work discipline, prevention and combating corruption among GPI employees;
- i) establish relations of international collaboration on the segment of competence;
- j) organize and perform the work with the trust line;
- k) perform and carry out other tasks, resulting from the Police-specific activities, established within its competence, through the internal acts of the GPI or on the basis of the directions of the head of the GPI.

12. Employees of the Division examine petitions, other information about GPI staff and perform inquiries regarding them in the following cases:

- a) violation of the legislation or work discipline by the GPI employees whose employer is the head of the GPI, who perform leadership competences within GPI;
- b) on contravention offenses committed with the application of violence, violation of the rules of social cohabitation and in connection with the exercise of the job duties;
- c) the unjustified application by GPI employees of firearms, physical force or special means resulting in damage and death or injury of citizens;
- d) conflict situations among GPI employees, accompanied by violent actions or inappropriate conduct;
- e) unreliable conduct during and outside the service;
- f) death or injury of GPI employees;
- g) disappearance without trace of GPI employees;
- h) violation of keeping record procedure and recording of referrals and other information on offenses, contraventions and incidents.

13. Petitions and other information submitted at the GPI that do not fall within the exclusive competence of the Division shall be forwarded to the competent subdivisions for examination within the time limit and under the conditions laid down by law.

14. The Division is invested with the following rights:
- a) free access to the GPI's offices, premises, rooms and means of transport and subdivisions subordinated to it;
  - b) to examine, under the conditions established and in compliance with the law, the premises, buildings, offices, rooms, warehouses, safes, special storage rooms, weapons and ammunition, provisional detention isolators, lands related to GPI and subdivisions subordinated to it;
  - c) to request and remove without undue delay from the GPI subdivisions the personal files of the employees, nomenclature files, information carriers, materials, documents and other information necessary for the performance of their duties, including the archives, with the secrecy and accounting initials, under conditions of the legislation in force;
  - d) to invite GPI employees at the headquarters of the Division whose presence is necessary for the fulfilment of its functional responsibilities;
  - e) to request explanations and information from GPI employees, according to their competence;
  - f) to submit to the Head of GPI proposals for amending the regulations in relation to the fields of activity of the Division;
  - g) to process the personal data of GPI employees under the law;
  - h) to subject GPI employees to the test at the detector of simulated behaviour (polygraph) within the limits of the legislation in force;
  - i) to carry out selective verification of income and property declarations as well as personal interests statements;
  - j) to submit referrals to the headmen of the GPI subdivisions on the liquidation of law violations and shortcomings found during inquiries or other activities carried out by the employees of the Division, as well as to request information in writing, within the prescribed time limit, on the measures taken in this respect;
  - k) to create and manage databases necessary for the performance of their tasks and to use the databases of GPI;
  - l) create, hold and manage archives;
  - m) to request from the GPI subdivisions materials of the inquiries for examination and execution.
  - n) propose to cancel or revise the orders and directions of the administrators of PGI and subordinated subdivisions, which are in conflict with the normative acts and legislation in force;
  - o) to send to the headmen of the GPI subdivisions communications and information on disciplinary misconduct committed by the subordinated staff, for performing the inquiries.
  - p) rule other rights in accordance with the provisions of the legislation in force.

15. The employees of the Division have the following obligations:
- a) to respect human rights and freedoms;
  - b) to ensure the protection and preservation of the information labelled as state secret and other official information with limited access, which have become known in the performance of their duties;
  - c) to report immediately to the head of the GPI the results of investigations and inquiries carried out, as well as to provide information on the part of prevention and combating corruption within the GPI;
  - d) to take the necessary measures in order to supervise the compliance with the legislation and work discipline by PGI staff, prevention and combating the acts of and acts related to corruption, acts of corrupt behaviour among its employees;
  - e) to ensure the security, integrity, honor, dignity, professional reputation, legitimate rights and interests of GPI employees;
  - f) to execute other obligations provided by the legislation in force.

*Activity Organization and Division's Structure*

16. Organizational structure and the staff of the Division are approved by the minister of the internal affairs, at the proposal of the head of GPI.

17. The Division is headed by the headman appointed by the and dismissed by the minister of internal affairs.

18. The head of the Staff Inspection Division:

- a) organizes and coordinates the activity of the Division and is responsible for the fulfilment of competences established;
- b) establishes the tasks and competences of Division's employees and the degree of responsibility for the fulfilment of work obligations;
- c) gives directions and mandatory rulings for execution to the employees of the Division on area of activity;
- d) submits to the leadership of the GPI proposals on the stimulation of employees subordinated to the Division, or where appropriate, within the limits of their competence, makes proposals on the application of disciplinary sanctions to them;
- e) calls operative meetings in order to examine the problems on the activity of the Division;
- f) distributes materials and correspondence arrived from the Division, according to the employee's work obligations;
- g) refers and signs, as established, the documents drawn up by the employees of the Division;
- h) controls the fulfilment of the activity plans, other tasks deriving from the specific Division's activity;

i) is responsible for organizing the work of the Division, including the full use by all employees of working time and the fulfilment of their duties during the working hours, as well as for not allowing them to involve in improper activities during the working hours;

j) performs other functions assigned to him / her through the internal acts of the GPI and / or on the basis of the of GPI leadership directions.

19. The head of the Division is assisted by a deputy Chief, appointed and dismissed by the head of the GPI, at the proposal of the head of the Staff Inspection Division, who simultaneously exercises the position of Head of Section no. 1.

20. In the absence of the Head of the Division, his functions are exercised by the Deputy chief of the Division.

21. The Deputy chief of the Staff inspection Division is subordinated to the Head of the Division.

22. The deputy chief of the Division:

a) ensures the organizational activity of the Division;  
b) executes the directions and legal provisions of the Head of the Division;  
c) distributes employees' obligations and gives them directions or rulings;  
d) performs the control of the tasks and duties fulfilment within Division;  
e) refers to the documents drawn up by the employees of the subdivisions of the Division, in the absence of its head (sections, service and chancellery);

f) shall submit to the Head of the Division proposals for the improvement and organization of the activities of its subdivisions;

g) submits to the head of the Division proposals to stimulate or sanction DIE employees;

h) performs other functions assigned through the regulations in force and / or on the basis of directions of the head of the Division.

23. The activity of the Division is exercised on a yearly planned basis drawn up according to the policy documents from the field and taking into account the competences established by the legislation in force.

24. The annual activity plan of the Division is approved by the head of the GPI.

25. The basic directions of the Division's activity are determined by its headman in accordance with the competences, rights and obligations provided by this Regulation and provisions of the legislation in force.

26. Structurally, the Division is composed of leadership, sections and services, according to the organigram.

27. The subdivisions within Division are set up for accomplishing the mission and tasks of the GPI in order to exercise the prerogatives related to the specific field of Police, according to the legislation in force.

28. Relationships within the Division are hierarchical, between sections and services they are functional.

29. The Division includes in its structure:

- 1) Section no. 1;
- 2) Section no. 2;
- 3) Analysis and planning service;
- 4) Chancellery.

30. Headmen of the sections, service and the employee of the chancellery are subordinated to the head of the Division.

31. The distribution of tasks within sections and services is carried out by the head of the section / deputy chief of the division, which in turn receives those directions from the head of the Division.

32. The settlement of the discrepancies between the employees of the Division in the process of tasks execution falls within the competence of the head of the Division.

33. The employees of the Division are obliged to study and to become acquainted without delay with the distributed materials, or no later than the next day, as well as to coordinate with the administrator the measures to be taken.

34. The functions, duties and rights of the employees of the Division are provided in the job descriptions, approved in the established manner.

35. Employees of the Division are responsible for the failure to perform their tasks in due time.

36. The employees of the Division have access to classified information on the basis of access authorizations issued according to the legal norms for the purpose of qualitative performance of the functional competences.

37. In the case of temporary absence of one of the employees of the Division at the workplace (business trip, holiday, studies, courses, etc.), the tasks which are in the execution procedure shall be transferred to another employee of the Division through the resolution of the head of the Division.

38. The tasks are executed individually by the employees of the Division, however, if they are of a complex nature or have a considerable workload, the headman may ruler, on the basis of written direction, their execution by several employees.

39. The head of the Division, his deputy, headmen of sections and services are personally responsible for the operative, correct and legal handling of the activities carried out.

40. The employees of the Division perform the tasks and the duties, respecting the special requirements and the fundamental rules of professional conduct and labor discipline, provided by the legislation in force, as well as by the regulations of GPI issued in this respect.

41. Headmen of sections/ services are responsible for elaborating and approving the job descriptions of the subordinated employees, which shall be signed by the subordinates, mandatory, once the order of employment, transfer, secondment or permutation, is communicated, depending on the situation.

42. The employees of the Division are obliged to participate at all measures of professional qualification, as well as to improve themselves.

43. Within the Division, Sections or Services from time to time there are organized work sessions in order to examine the issues which appeared in the process of activity and control of execution of documents, recorded in a registry with minutes.

44. The correspondence is signed by the head of the Division and, in his absence, by the Deputy Chief of the Staff Inspection Division or another person appointed for that purpose by order of the head of the GPI.

45. The employees of the Division are obliged to know and apply exactly the provisions of this Regulation, according to the functional competences.

46. Section no. 1 fulfils the following tasks:

a) examines the petitions submitted to the GPI regarding the actions of its staff, as appropriate, as well as the directions of the head of GPI, as the case may be, at the discretion of the Head of the Division;

b) performs inquiries on increased resonance cases;

c) performs planned unannounced and controls to verify compliance with the legality and work discipline by GPI employees;

d) performs special control of candidates at employment and promotion within GPI;

e) performs the special investigative activity, according to the legislation;

f) shall submit proposals to the head of GPI to settle the gaps identified in the work of the GPI;

g) provides assistance at the development and implementation of policies to ensure compliance with current legislation and work discipline and combat corruption among GPI staff;

h) cooperates with GPI subdivisions, MIA and other law enforcement agencies in the field of ensuring compliance with the legislation and work discipline, prevention and combating corruption among GPI employees.

47. Section no. 2 fulfils the following tasks:



- a) examines the petitions submitted at the GPI regarding the actions of its staff, as appropriate, as well as the indications of the head of GPI, as the case may be, at the discretion of the Head of the Division;
- b) performs inquiries on cases of increased resonance, actions of corruption, related to corruption, acts of corrupt behaviour, acts of torture, inhuman or degrading treatment;
- c) performs the special investigative activity, according to the legislation;
- d) cooperates with GPI subdivisions, MIA and other law enforcement agencies in the field of ensuring compliance with the legislation and work discipline, prevention and combating corruption among GPI staff;
- e) organizes and performs the work with the trusted line;
- f) establishes relations of international collaboration on the segment of competence;
- g) also conducts other activities specific to the Police.

48. Analysis and planning service fulfils the following tasks:

- a) conducts the planning of the activity of the Division, as well as the record of the planned measures;
- b) organizes and performs the work with the trusted line;
- c) provides the necessary assistance to the employees of the Division, in order to successfully carry out their duties;
- d) performs the special investigative activity;
- e) carries out a continuous analysis of risks likely to compromise the safety of GPI;
- f) submits Proposals to the Head of the Division for settling the gaps identified in the activity of the GPI and subdivisions subordinated to it;
- g) provides assistance in the development and implementation of policies in the field of surveillance and control of the observance of the legislation and work discipline and fight against corruption among the GPI staff;
- h) submits to the Head of the Division Proposals to amend legislative and normative acts concerning the fields of activity of the Division;
- i) establishes relations of cooperation with the subdivisions subordinated to GPI, MIA and other law enforcement bodies in the field of surveillance and control over the observance of the legislation and work discipline, prevention and fight against corruption among GPI staff;
- j) develops and manages databases necessary for exercising the duties of the Division;
- k) performs human resources activities related to the employees of the Division.

49. If necessary, at the direction of the Head of the Division, regardless of the competences assigned to its structural subdivisions, the employees of the Division may perform the functional duties on the basis of reciprocal substitution.

50. Division's Chancellery performs secretarial and archive work in accordance with the legislation in force.

#### *Special Provisions*

51. Involvement in the activity of the Division or creation of impediments in the exercise of the functional responsibilities of the employees of the Division from GPI staff, attracts, as the case may be, liability according to the legislation in force.

52. The GPI employees and subordinate subdivisions are required to provide the necessary support to the employees of the Division in the execution of their competences.

### **5.5. The Customs Service**

The National Integrity and Anti-Corruption Strategy for the period 2017-2020, approved by Parliament Decision No. 56 of 30 March 2017, specifies that customs are one of the areas of the public sector which are vulnerable to corruption either because of the high level of contact with the population, or because of the management of considerable economic interests.

The Report on the Customs Service Activity in 2017 states that by implementing the abovementioned Strategy, the Customs Service purports to:

- Discourage the corruption among customs employees;
- Strengthen the anticorruption authority as an instrument in fighting against corruption;
- Target sectors vulnerable to corruption, customs inspectors from the I and II lines of customs control (customs posts and mobile teams as well as other categories of customs inspectors that have direct contact with the economic operators);
- Transparency in the decision-making process within the Customs Service;
- Implement integrity and ethics standards in the activity of the customs employees by applying into a more efficient way of the Conduct and Ethics Code (launched in October 2016);
- Develop integrity rules in the activity of the customs subdivisions, collaboration with the business environment in the field of ethics and conduct (mediation and dialogue within advisory Committees);
- Enhance the environment of human rights protection;
- Educate the youth employed in the spirit of integrity and intolerance for corruption.

The Report on the Customs Service Activity in 2017 reveals that the criminal investigative body of the Customs Service initiated 229 criminal cases in 2017, among

them - 2 criminal cases under the Article 329 of the CC (“Negligent performance of duties”). One of these two cases was brought before the court.

Regarding corruption countering in customs system, it shall be mentioned that during the year 2017 the specialized subdivision of the Customs Service conducted 87 enquiries, 74 of them were concluded and 16 were suspended. After examination and completion of enquiries 35 customs servants were sanctioned with disciplinary measures as follows: reprimand – 13; admonition 9; severe reprimand – 9; dismiss from customs service – 4.

#### **5.5.1. Legislation regulating the activities**

The customs activity is regulated by the Law on the Customs Service, the Customs Code, the CPC, the Law on SIA, internal regulations, *etc.*

The new Law on Customs Service no. 302 was adopted by the Parliament of the Republic of Moldova on 21 December 2017 and came into force on 2 June 2018. This Law establishes a new perspective on the employment, professional development, stimulation, sanctioning, organization and operation of the Customs Service, the special status of the customs officers as well as of the service of the customs officers.

To the experts’ knowledge, in the near future the new Customs Code should also be adopted. At the time of preparing this part of the Assessment, the draft Customs Code was at the stage of preparation and harmonization.

#### **Structure and organization**

According to the Law on Customs Service, the customs service is an administrative body, subordinated to the Ministry of Finance. The Customs Service implements the customs policy of the state by applying uniformly and impartially the customs legislation in order to ensure the economic security of the state within its competence.

The Customs Service is a separate organizational structure in the administrative system of the Ministry of Finance. The Customs Service consists of:

- a) the central office;
- b) territorial customs offices, which are subordinate to the central office;
- c) customs posts that are subordinated to the territorial customs offices.

Regulations on the organization and functioning of the Customs Service and its maximum number are approved by the Government on the proposal of the Minister of Finance. The general structure of the Customs Service is approved by the Minister of Finance, and the organizational structure of the territorial units is approved by the General Director of the Customs Service.

The leadership of the Customs Service is carried out by the General Director and one or several of his deputies. Among other functions, the General Director of the

Customs Service directs the Customs Service; controls the activities of it; signs official and administrative acts within the competence of the Customs Service; may delegate this right to the Deputy Director or, as the case may be, to other persons holding managerial positions in the Customs Service; decides on issues of operational, organizational, financial and economic activities, as well as material and social security, *etc.*

According to the Article 8 of the Law on Customs Service, in order to fulfil its functions, the Customs Service *inter alia* establishes the crimes that fall within its competence and carries out operational-search activities to identify those persons who prepared or committed customs offenses, smuggling and other crimes within the competence of the criminal investigative body of the Customs Service.

In the central office of the Customs Service there are two subdivisions whose functions are related to the disclosure and investigation of acts of corruption – the Criminal Investigation Division and the Integrity and Surveillance Division. The activities and the functions of these divisions are prescribed in the legal acts, approved by the orders of the General Director of the Customs Service, the provisions of which will be discussed in detail in the text below.

#### **5.5.2. Functions and mandates in prevention and investigation of criminal acts of corruption, interagency cooperation**

According to the legal framework there are three main purposes of the activities of the Customs Service in the field of prevention, detection and investigation of criminal acts:

- 1) special investigation activity (carried out in line with the Customs Code and the Law on SIA);
- 2) criminal investigation activity (carried out in line with the Customs Code and the CPC);
- 3) internal investigation activity (carried out in line with the Law on SIA and internal regulations).

The analysis of the legislation and practice revealed, that the Customs Service has very little empowerments in detecting and investigating corruption cases. Besides, the cooperation between the Customs Service and other LEAs in this field is insufficient.

##### *Criminal investigation activity*

According to Article 56 and 253 of the CPC and Article 222 of the Customs Code, criminal investigation activity in the customs authorities is carried out by the criminal investigative body of the Customs Service and its territorial subdivisions. Criminal investigations are carried out by appointed criminal investigative officers of the Customs Service (Article 55 Paragraph 1 of CPC).

The functions of the criminal investigative body within the customs are implemented by the Criminal Investigation Division (hereinafter – the CI Division) - a

structural subdivision of the Anti-Fraud and Compliance Department within the Central Office of the Customs Service.

According to the Regulation on the Organization and Operation of the Criminal Investigation Division, approved by the order No. 11 of 22 December 2016 of the General Director of the Customs Service, the CI Division is an independent procedural subdivision, directly subordinated to the Deputy Chief of the Customs Service, who is also the head of the Anti-Fraud and Compliance Department.

The CI Division ensures the prevention, detection, investigation and prosecution of offenses assigned to the competence of the Customs Service.

The basic functions of the CI Division are the following: to conduct the criminal investigation on the proceedings and criminal cases falling within the competence of the Customs Service according to the law; to examine, according to the CPC, the referrals and information about crimes and to detect crimes and contraventions; to undertake the measures provided by law for investigating under all aspects, completely and objectively, the circumstances of the case for establishing the truth.

As of the preparation of this report, the CI Division consisted of the Chief of the Division and 14 criminal investigative officers, who are independent and subject to the legal instructions from the prosecutor in written or oral form (Article 222 Paragraph 2 of the Customs Code).

However, the competence of the criminal investigative body of the Customs Service is restricted only to the crimes provided in the Articles 248 (Smuggling) and 249 (Evasion from Customs Payments) of the CC. If strictly observe the laws, the criminal investigative body of the Customs Service doesn't have the right to conduct pre-trial investigation in corruption cases, that have come to light in the exercise the direct functions by the customs employees<sup>4</sup>.

The Article 273 of CPC empowers the officials of the Customs Service with the rights to apprehend the suspects, to seize material evidence, to require the information and necessary documents to investigate the crime, to summon persons and to take statements, to assess damage and to perform any other urgent actions in line with CPC (Article 273 Paragraph 2 of CPC). The findings issued in line with the provisions of Article 273 Paragraph 2 along with other material sources of evidence shall be sent within

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<sup>4</sup> As already was mentioned, the Customs Service Activity Report for the year 2017 reveals, that in practice the criminal investigative body of the Customs Service initiates criminal cases not only according to Article 248 of the CC (190 cases in 2017) and Article 249 of the CC (16 cases in 2017), but also according to the other Articles of the CC: 11 criminal cases under Article 217 (Illegal circulation of narcotic, psychotropic substances); 6 criminal cases under Article 361 (Fabrication, possession, sale or use of official documents, imprints, stamps or seals); 3 criminal cases under Article 190 (Fraud); 1 criminal case under Article 290 Criminal Code (Illegal Carrying, Storing, Purchasing, Producing, Repairing, or Marketing of Weapons and Ammunition and Their Theft); 2 criminal cases under Article 329 (Negligent performance of duties). According to the competence, 13 criminal cases were transferred to the other criminal investigative bodies.

24 hours to the corresponding criminal investigative bodies created by law, who shall decide whether initiate the criminal investigation or not (Article 273 Paragraph 3 of CPC).

Taking into account the legal regulation, mentioned above, it becomes clear that the customs officers, who detect the elements of corruption crime while performing their direct functions, do not have competence to initiate and to conduct a criminal investigation.

During the on-site visit the representatives of the Custom Service and other LEAs referred to Article 271 Paragraph 7 of the CPC („The Prosecutor General and his/her deputies may rule by a reasoned order that any criminal investigative body conducts the criminal investigation in line with the provisions of this Code”) and stated that there are no legal obstacles for the prosecutor to assign the criminal investigative body of the Customs Service to conduct criminal investigation in any corruption case. However, in the opinion of the experts, taking into account the subject empowered to make such a decision (the Prosecutor General and his/her deputies only) and the requirement to motivate it, the abovementioned provision seems to be used only in an exceptional case. Thus, it must be concluded that CPC doesn't provide legal basis for the criminal investigative body of the Customs Service to conduct criminal investigation of corruption acts, detected by the customs authorities while implementing their functions. This is confirmed by the practice – the experts were told that even the petty corruption cases are not assigned to the criminal investigative body of the Customs Service; the criminal investigation in such cases is conducted by the NAC.

The NAC officials have the power to visit customs posts and themselves to carry out all the procedural actions indicated by the CPC, but in practice they very often ask for assistance from the customs employees, as specific knowledge about customs procedures is needed to investigate corruption crimes within the customs system. A prosecutor who controls the investigative activity of NAC may form an investigation group and include the Customs Service employee, who will act as an operational officer.

If the elements of corruption acts, committed by the customs employees, are detected by the customs authorities, such information is transmitted to the NAC or to the APO. If there is any doubt as to whether detected actions lead to criminal liability or do not exceed the limits of disciplinary violation, the investigation officers of the Customs Service can carry out special investigative measures, prescribed in the Law on SIA. However, according to the Article 18 of this Law, there are only three measures within the competence of the Customs Service, that could be made outside the criminal proceedings: a) interrogation; b) collection of information about persons and facts; c) identification of the person. In the opinion of the representatives of the Customs Service, such a scope of special investigation activity is insufficient to reveal corruption acts in the customs system. The representatives also expressed the opinion that the criminal investigative body of the Customs Service have enough human resources and after taking

the trainings would be able to investigate small-scale corruption acts, detected by the customs authorities while implementing their direct functions.

Yet, the representatives of the NAC and the APO were very sceptical about the ability of the Customs Service to conduct criminal investigations of small-scale corruption acts in the customs system and referred to the lack of experience of the customs officers in investigation of such cases. Moreover, they expressed as the main argument, that criminal actions of the official or civil servant cannot be investigated by the officers of the same system (in this case – the competent body created in the Customs Service).

#### *Special investigation activity*

According to the Article 219 of the Customs Code, the customs authorities are a subject of special investigation activity that is carried out in accordance with the Law on SIA.

Article 6 of the Law on SIA empowers the investigation officers of the specialized subdivisions within the Customs Service to perform the special investigation activity. The representatives of the Customs Service pointed out that at the moment there are about 10 investigation officers in the Customs Service.

However, the Customs Code clearly states, that operational measures should be used only for the purpose to identify persons who prepare or have committed a violation of customs rules, smuggling and other crimes that fall within the competence of the criminal investigation body of the Customs Service (Article 219 Paragraph 2). Thus, it must be concluded that, in accordance with the law, the Customs Service shouldn't carry out special investigation activity for the purpose of detecting corruption crimes, investigation of which falls within the competence of the NAC.

The Article 2 of the Law on SIA specifies the tasks of the special investigative activity) to reveal criminal attempts, prevent, stop crimes and identify the persons who organize and/or commit them;

- b) to detect and investigate criminal offences;
- c) trace missing persons or those who are hiding from the criminal prosecution body or from the court or evade the execution of sentences;
- c<sup>1</sup>) track goods derived from unlawful activities and collection of evidence regarding those goods;
- d) collect information about possible events and/or actions that may jeopardize state security.

This list is exhaustive and that means, that special investigative measures could not be used for any other purpose. On the other hand, the following analysis of internal legislation of the Customs Service reveals that operational measures are used in order to detect disciplinary violations of corruptive nature.

### *Internal investigation activity*

In 2016, within the Central Office of the Customs Service, was established the Integrity and Surveillance Division (hereinafter – IS Division) - an autonomous, independent subdivision, subordinated exclusively and directly to the General Director of the Customs Service.

The Regulation on the Organization and the Operation of the IS Division was approved on 22 December 2016 by the Order no. 18 of the General Director of the Customs Service (hereinafter - Regulation).

According to Article 2 of the Regulation, the main tasks of the IS Division *inter alia* is to ensure the internal security of the customs authorities, legal protection of the customs officers and their decision-making factors, persons who provide assistance in carrying out special investigative measures, supervision and control of the observance of the legislation and discipline of service by the employees of the Customs Service; prevention and combating of corruption acts, corruption-related acts, unlawful enrichment and conflicts of interest in which they might be involved, monitoring and informing individuals who may compromise the employees of the Customs Service and conditions that favour their interaction, creating a favourable environment for deviant behaviour of customs officers.

Upon the directions of the General Director of Customs Service, the IS Division shall conduct investigations on the acts committed by employees of the customs authorities, which may constitute disciplinary offenses and may be subject to disciplinary sanctions. It shall also examine the notifications and petitions concerning the activity of the customs authorities.

The IS Division is composed of two sections – the Special Investigation Section (hereinafter – the SIS) and the Video Monitoring Section. The Head of the IS Division and his/her Deputy, who is also the Head of Special Investigation Section, are appointed and dismissed by order of the General Director of the Custom Service.

The Video Monitoring Section among others has the obligation to report to the Head of the IS Division and to the General Director of the Customs Service about corruption cases and other violations of customs legislation became known as a result of video surveillance. The staff of the Video Monitoring Section consists of the Head of Section, 2 main inspectors and 2 superior inspectors.

The SIS conducts inquiries and examines petitions, referrals, inquiries, and other information about the alleged actions of corruption, corruption-related acts, corrupt behaviour, conflicts of interest and degrading treatment. The SIS is composed of the Head of the Section, 9 main inspectors and 4 superior inspectors.



According to statistical data, presented by the Custom Service, in 2017, the SIS initiated 87 disciplinary inquiries. As a result, 35 customs employees were disciplinary sanctioned. Most of disciplinary sanctions were applied for failure to respect the discipline, superficiality in the execution of their professional duties, inefficient involvement in the process of conducting the customs control, irresponsible attitude towards the fulfilment of professional duties as well as disregarding the job description. Also, there were many cases of enforcement of disciplinary sanctions for the failure to respect the job discipline and the provisions of the Code of Ethics and Conduct of the customs employee.

The investigation of some violations of functional obligations of the customs employees revealed the presence of the elements of the criminal offence in their actions. Therefore, in 2017, 12 cases had been transferred to the NAC and the APO according to the Article 274 of CPC for the purpose of initiating criminal investigations. Also 3 denunciations of inappropriate influence, received by the IS Division, had been transferred to the NAC.

Taking into account the numbers of disciplinary violations and alleged criminal offences of corruptive nature, established by the IS Division, it should be concluded that the IS Division operates efficiently enough.

#### *The special investigative activity of the IS Division*

According to the Regulation, the SIS is invested with the right to carry out the special investigative activity within the limits of their competence.

Article 1, paragraph 1 of the Annex no. 1 to the Regulation provides for that the SIS performs special investigative activities in a public and secret manner within the limits of the competences assigned by the legislation of the Republic of Moldova and the normative acts of the Customs Service. This provision also foresees the aim of such activity – ensure its internal security, ensure the protection of the customs authorities, decision-making factors and persons that provide support in the performance of the special investigative activity.

In the opinion of the experts, these provisions of the Regulation are incompatible with the Law on SIA and the Customs Code, because:

- the Law on SIA doesn't provide for a possibility of using special investigative measures in order to reveal disciplinary offences;
- the Customs Code provides for that special investigation activity can be carried out only for the crimes that fall within the competence of the criminal investigation body of the Customs Service.

#### *The cooperation between the Customs Service and other public authorities*

The Regulation empowers the SIS to request from the LEAs the presentation of the copies of documents, information and other data necessary for exercising the duties of the IS Division. However, it seems that in practice this provision doesn't work properly.

The representatives of the Custom Service pointed out, that their requests for information are often not answered at all. The representatives of the NAC and APO agreed that such cases may occur due to heavy workload of prosecutors and investigators – requests of the Customs Service are not priority matters to the APO and the NAC, thus there is simply no time to answer.

The experts got acquainted with the cooperation agreements, signed between the Customs Service and other institutions:

1) The Agreement of collaboration between the NAC and the Customs Service in the field of acquiring and harnessing external assistance was signed on 10 October 2017. According to this document, the Customs Service shall inform the NAC if there is suspicion of fraud, misuse, embezzlement, corruption and other related acts in connection with means from external funds and to provide to the NAC all relevant information and material. The collaboration shall be accomplished by: a) exchange of information, documents and statistic data; b) access to information systems; c) provide special consultations; d) conduct in common the activities.

2) The Cooperation Agreement between the Center for Combating Economic Crimes and Corruption<sup>5</sup> and the Customs Service of the Republic of Moldova, concluded on 28 of November 2006, established that the Parties shall cooperate in the following areas:

- a) ensuring the economic security of the state;
- b) combating corruption and protectionism, smuggling, money laundering and terrorist financing and other offenses that fall within the competence of the Parties;
- c) information exchange in the field of the state security;
- d) protect state secrets and ensure security of information of the Republic of Moldova.

According to the Agreement, the collaboration shall be accomplished through:

- a) the exchange of information in the above-mentioned areas;
- b) exchange of experience in the field of information security, state and commercial secret protection, including by providing consultations, organization of meetings, seminars and training courses;
- c) jointly conduct the investigative and special operations measures.

According to the knowledge of the expert, this Agreement is still valid. It clearly provides the legal basis for the customs officers to request the necessary information from

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<sup>5</sup> The former title of the NAC.

the NAC. It is therefore concluded that the ignoring of such requests, if it occurs, is not justified.

Taking into account the situation in practice (namely, the lack of cooperation based on goodwill), it would be valuable to review and update the cooperation agreements or to prepare a new one on the exchange of information related to corruption acts.

3) The Agreement between the Customs Service and the NAC on access to the Integrated Customs Information System, was concluded on 3 of May 2013. It provides that the Customs Service and the NAC, based on the need to intensify the collaboration and interaction in their fields of activity, agreed that the Customs Service will grant to the NAC employees access to the Integrated Customs Information System.

4) Agreement between the Border Police Department of the MIA and the Customs Service on the exchange of information, signed on 2014, September 1. According to the Article 2 of this Agreement, the scope of the cooperation in the field of exchange of information is to conduct partnership activities for combatting *inter alia* corruption and other offences and contraventions whose prevention, counteraction and discovery fall within the competence of the parties of the Agreement. Although, the legal basis for the exchanging of information exists, during the visit, the representatives of the Customs Service specified that the Border Police unreasonably refuses to provide necessary data quite often.

It has been mentioned that in 90 % of cases, the Border Guard officers refuse to provide the Customs Service with video records that are necessary for the investigation of alleged corruption acts in customs. Also, there were a few cases when Border Guard officers deliberately blocked access to the customs post. Such actions hinder the effective implementation of the main task of IS Division - the fight against corruption at the customs, since it may not be possible to gather sufficient evidence of the corruption act committed by the customs officers.

There is no joint agreement between the LEAs obliging them to report to each other if one of them detects the elements of an administrative or criminal offence committed by the other LEA's officer.

The experts have got an impression, that in practice cooperation between law LEAs, responsible for prevention and investigation of acts of corruption is based not upon legal agreements, but on the personal relationships between the heads of the institutions or its competent subdivisions.

### **5.5.3. Decision making policy and internal procedures**

According to Article 272 of the CPC, in an „urgent cases”, if a criminal investigative body determines that a criminal investigation is not within its competence, it shall perform however, any urgent criminal investigative actions. The transcript of the actions performed in these cases shall be attached to the respective case file sent to the

prosecutor in line with the provisions. However, it seems, that this provision isn't implemented in practice when the customs officers detects the elements of the alleged corruption crime.

During the interviews the representatives of the Customs Service explained that if active corruption cases are detected in the customs system, the customs officers do not perform any investigative actions in line with the CPC. The information about the alleged crime via „hotline” is immediately transmitted to the NAC, which initiates and conducts the investigation. The Customs Service officer is instructed on further actions via telephone. He/she must unconditionally follow the instructions of the NAC officer. The Customs Service requested the NAC to draft recommendations on the customs officer's actions, but it have not been drafted yet. It happens that when the customs officer dials the hotline to the NAC, he/she is asked to wait and is called back in 10-15 minutes. There were cases when the NAC officers failed to visit the incident location.

In the opinion of the experts, it would be useful to develop methodical recommendations on the actions to be taken by the customs officer if, in carrying out his direct functions, if he establishes that a corruption-related crime could have been committed.

The absence of clear legal regulation on these issues creates situations in which adequate and timely response to corruption crimes, the urgent initial of pre-trial investigation and the conduct of primary evidence-gathering activities are not ensured, but left to the discretion of the officials.

#### **5.5.4. Independence**

All employees of the Customs Service are administratively subordinated to Director General of the Customs Service – they are appointed, dismissed, transferred, seconded or delegated by the Director General of the Customs Service, in some cases - upon proposal by the heads of structural divisions.

Formally, the officials of the IS Division cannot be influenced by any other employee of the Customs Service. However, during the meeting, the representatives of the Customs Service indicated that in practice their activities may be subject to unacceptable influence through certain administrative decisions that could create disadvantage situation to the officials of the SIS. For example, there is no sufficiently regulated procedure for paying overtime and holidays in the customs; decisions on incentives are taken by the Legal Department of the Customs Service; the issues of attestation as well as the issue of the appointment of the Head of Unit for the second term of office are decided by a special commission. The officials of the SIS do not have greater immunity and guarantees of independence in comparison with other employees of the Customs Service.

In the opinion of the experts, the question of the special procedures of appointment, dismissal, attestation of the employees of the IS Division with some additional guarantees of independence, could be under the consideration.

#### **5.5.5. Findings**

The Customs officers, in principle, have no competence in the field of investigating corruption crimes committed in the customs system. Even cases of small-scale corruption detected by the customs officers themselves are being investigated exclusively by the NAC.

The representatives of the Customs Service, the NAC and the APO unanimously agreed that customs officers do not have necessary experience, competence and knowledge in investigating corruption crimes. On the other hand, customs officers conduct criminal investigations of other crimes that fall within their competence, therefore, they are aware of the essence of the procedural requirements.

Also, it should be mentioned, that the employees of the IS Division have ensured the process of coordination and assistance within investigative measures conducted by the APO and the NAC on the corruption cases in relation to the customs employees of Sculeni, Leuseni, Otaci, Palanca, Tudora, Cahul, Posta customs posts. Thus, the investigation of corruption cases is not entirely new and unknown area for customs officers. In the opinion of the experts, the possibility of amending legislation could be considered in order to empower the criminal investigative body of the Customs Service to conduct criminal investigation of small-scale corruption cases, detected by the customs officers, thereby reducing the workload of the NAC officers.

Establishing in the legislation the competence of customs officials to investigate certain corruptive criminal acts would eliminate the existing collision regarding special investigation activity of the customs. According to the current regulation, special investigation activity of the IS Division of the Customs Service, in principle, serves to other purposes than those prescribed in the Law on SIA.

The cooperation between the Customs Service and other law enforcement agencies is a blank side. All valid agreements signed by the Customs Service as a party should be revised. In the opinion of the experts, rules should be developed according to which the state authority, upon detection of possible illegal enrichment of an official or elements of disciplinary violation, committed by him/her, should submit the information to the institution in which such an official is serving.

## **6. INTERNATIONAL COOPERATION**

All international cooperation between Moldova and the outside world is conducted by the General Prosecutor's Office. Over the last few years, Moldova has signed several Memorandums of Understanding with the competent authorities of different countries and also signed several JIT agreements and participated in JIT work in several countries (Romania, Bulgaria, United Kingdom, Lithuania and Czech Republic). The total number of signed JIT's during 2013-2016 was 7. Eurojust participated in the aforementioned JITs, where the persons were suspected for corruption, cybercrime, terrorism and smuggling). Throughout 2017, the exchange of information with Eurojust was carried out through the designated Contact Point. Eurojust received assistance from the Republic of Moldova in 6 cases. The prosecutors participated at 3 coordination meetings organized by Eurojust on international prosecutions that were linked to national criminal investigations. In these cases, Republic of Moldova was the member of a joint investigation who carried out the work. In 2017 there were performed missions within two joint investigation teams, one (Romania - United Kingdom - Republic of Moldova - Bulgaria - Lithuania) related to the economic and financial organized criminality (money laundering) and the second one (the Czech Republic) on a case of drug trafficking. At the time of the interview with the General Prosecutor's Office, a JIT between Moldova, Romania, Spain and Czech Republic was under negotiation.

### **6.1. Cooperation with International Institutions and Organizations**

#### *Agenda and the Association Agreement*

On April 11, 2017, the General Prosecutor adopted by Order no. 14/7.2 the Action Plan of the institution for the implementation of the National Action Plan for the implementation of the Moldova-EU Association Agreement, during the 2017-2019 period, approved by Government Decision no. 1472 of 30.12.2016. The Prosecutor's Office was involved in the implementation of 33 activities in 2017, 5 of these activities were executed.

#### *The Council of Europe (CoE)*

The implementation of the project "Support for Criminal Justice Reform in the Republic of Moldova", funded by the Government of Denmark, was continued in 2017 by the CoE. During this period the prosecutors have benefited of vocational training in the field of management and leadership, professional development of the prosecutor's office employees, including by strengthening the capacities of specialized prosecutor's offices. The brochure on the Prosecutor's Office of the Republic of Moldova was published after the Law No. 3 on Prosecutor's Office entered into force.

At the event dedicated to the celebration of 25 years since the Prosecutor's Office of the Republic of Moldova was created, on the 27th of January 2017, was organized

jointly with the Council of Europe, the International Conference on “Perspectives of development of the modern prosecutor’s office: ensure the independence and specialization of prosecutors ”.

#### *Conclusion of International Collaboration Agreements*

- The Cooperation Program "GEMINA" for 2017-2019 between the General Prosecutor's Office of the Republic of Moldova and the Prosecutor's Office attached to the High Court of Cassation and Justice from Romania.

In 2017, 8 prosecutors from the Republic of Moldova have benefited from four internships organized by the Prosecutor 's Office attached to the High Court of Cassation and Justice of Romania for prosecutors originating in the European Union Member States, coordinated by the European Judicial Network of Professional Training and the National Institute of Magistracy in Romania.

- The Cooperation Agreement between the Prosecutor's Office of the Republic of Moldova and the General Prosecutor's Office of the Russian Federation of 27.01.2017.

The Agreement formalizes the exchange of information and best practices between parties, facilitating and accelerating procedures of providing legal assistance in order to prevent and combat crime, including different forms of organised crime and other aspects of cooperation.

## **6.2. International Legal Assistance in Criminal Matters**

### *Extradition requests*

16 requests of extradition (24 in 2016) received from the authorities of foreign states were examined, 5 requests were logged before the court (6 in 2016), out of which 5 were admitted and the persons were handed over to the foreign states (6 in 2016). In one case the request was rejected, the rest of cases were under examination (3 cases in 2016).

At the same time, during the reporting period, 365 pieces of information were examined (372 in 2016). Therein was about the detention or the localization on other states’ territory of wanted persons by the law enforcement authorities of the Republic of Moldova. Of the total number of information examined, 223 extradition procedures were initiated (191 in 2016), 79 of them were admitted (147 in 2016), and 116 are under examination (44 in 2016). 46 pieces of information were transmitted to the Ministry of Justice in line with its competencies (61 in 2016) and 28 (120 in 2016) were left without examination for various reasons (the ownership by the wanted person of the nationality of the requested State on whose territory he/she was identified, expiry of the statute of limitations, the lack of the measure that deprives of freedom, decriminalization of certain categories of crimes, etc.).

### *Requests for letters rogatory*

In 2017, the territorial and specialized prosecutor's offices received for execution 363 requests for letters rogatory (461 in 2016) formulated by the foreign competent authorities, out of a total of 469 (502 in 2016) requests received by the General Prosecutor's Office. 55 requests for letters rogatory have been returned to the foreign authorities without execution (27 in 2016), 19 (14 in 2016) were executed directly by the prosecutors of the General Prosecutor's Office.

The national law enforcement bodies formulated 305 letters rogatory (306 in 2016). Out of this, 59 letters rogatory (50 in 2016) were returned to Moldovan prosecuting authorities for a reenactment according to formal and material requirements stated in the foreign state legislation.

#### *Requests for transfer or taking over of criminal prosecution*

In the reference period, the General Prosecutor's Office received 19 (35 in 2016) requests from the foreign states to take over the criminal prosecution of cases that are before court. Following the examination, in 8 (32 in 2016) cases it was decided to take over and continue the criminal prosecution on the territory of the Republic of Moldova. For 10 (3 in 2016) it was refused to take over the criminal prosecution and in one case the materials were transmitted to the Ministry of Justice, according to the competence.

At the same time the territorial and specialized prosecutor's offices requested to transfer abroad the criminal prosecution in 14 (12 in 2016) cases and it was decided to transfer to the foreign competent authorities 2 criminal cases for further criminal prosecution and 8 criminal cases were returned to the initiators as non-compliant with the requirements of the national legislation and international instruments provisions to which Republic of Moldova is part of. Another 4 transfer requests of criminal proceedings are currently under examination.

#### *Recognition of foreign criminal decision and transfer of convicted persons*

In the reference period, the prosecutors have participated at the examination before court of 25 requests of the Minister of Justice on the recognition of the final foreign criminal decisions. 5 requests were admitted and the other 20 are under examination. There have also been examined 121 requests of the Ministry of Justice on the transfer of persons convicted by a foreign state for continuing to serve the punishment in the Republic of Moldova. 101 of them were admitted, 2 – rejected and 18 are under examination.



## 7. THE RESULTS OF THE QUESTIONNAIRE

The Twinning Project Team has prepared and delivered a web-based questionnaire to collect information for analysing current capacities (human resources, trainings, technical supply, access to information, etc.) of the beneficiary institutions, effectiveness of cooperation between different bodies. Respondents represented both operational and management level of the relevant institutions. The team of experts received altogether 92 replies.

34 respondents represented APO and 33 respondents represented NAC. 15 replies were received from SPIA, 5 - from GPI and 5 – from the Customs Service.

More than two thirds of respondents have long-term (more than 5 years) work experience in law enforcement agencies of Moldova.

15 (16 %) respondents occupy top and mid management positions and 77 (84 %) are operational staff.

The majority of respondents agree that Moldova is vulnerable to criminal acts of corruption and this phenomenon is a serious problem in the country.

In the opinion of respondents, the most vulnerable areas to corruption crime are health care (79 % of respondents agreed or strongly agreed with this statement), local public administration (77 %), justice and law enforcement (71 %).

### *Competent authorities and its capacities*

62 respondents (or 68 %) think, that the capacities of his/her institution are sufficient to implement its functions in the field of fighting against corruption; only 5 respondents (or 5 %) disagree with this statement. However, the majority of respondents indicated, that the capacities of their institution could be improved by ensuring more financial resources, more human resources, more trainings; 11 respondents (or 13 %) indicated that wider access to databases is needed.

65 respondents (or 71 %) agreed that the independency of his/her institution in implementation of its functions in the field of fighting against corruption is sufficient. Only 2 respondents (or 2 %) expressed the opposite opinion on this matter; in explaining their responses, those two persons indicated that their institution needs financial and technical-administrative independence as well as ensuring confidentiality and non-disclosure of information about ongoing special investigative activity.

62 respondents (or 67 %) think, that the legal framework of Moldova in the field of prevention and investigation of criminal acts of corruption is sufficient. 6 persons (or 6 %) disagree with this statement; they pointed out that the legal framework regarding the procedure for ruling and conducting special investigative activity should be revised; the exchange of necessary information between institutions engaged in fight against

corruption should be ensured; the notion of civil servant, prescribed in the CC has to be clarified; more drastic penalties for corruption crimes should be imposed.

The majority of respondents (59 respondents or 65 %) indicated, that operational capacities of the Law Enforcement Agencies of Moldova in the field of prevention and detection of criminal acts of corruption are sufficient; those 7 respondents (or 8 %), who disagree with it, pointed out that operational capacities could be improved by such measures as: increasing the number of employees, establishing solid salary guarantees with review only in exceptional economic situations, ensuring sufficient financial and human resources, improving the quality of staff selection, organizing and conducting qualitative training; enhancing access to information in order to facilitate the process of analyzing and investigating corruption cases.

More than a half of respondents (50 persons or 56 %) agree, that the level of coordination between the authorities responsible for combating corruption crimes at the moment is sufficient. 4 persons (or 4 %) have the opposite opinion regarding this statement; in their opinion there is a lack of institutional cooperation in the investigation of corruption offenses on the same facts and/or persons, also there is insufficient cooperation, exchange of experience and information between NAC and SPIA.

#### *Effectiveness of the mechanism for the prevention of corruption crimes*

More than a half of respondents (53 persons or 59 %) think, that the relevant authorities, responsible for the prevention of corruption crimes, have efficient procedures for handling and exchanging intelligence; 7 respondents (or 8 %) disagree.

45 respondents (or 49 %) agree and 13 respondents (or 14 %) disagree that competent authorities have appropriate databases for handling and exchanging of intelligence.

63 respondents (or 68 %) think, that intelligence is efficiently used for prevention of corruption crimes purposes; 6 respondents (or 7 %) expressed the opposite opinion.

The majority of respondents agree that responsible authorities for the pre-trial investigation:

a) take into consideration the corruption crime aspect during the investigation and criminal prosecution (62 persons or 67 % agreed with this statement and 3 persons or 3 % disagreed);

b) cooperate and coordinate their activities appropriately during the investigation and criminal prosecution related to corruption crimes (56 persons or 61 % agreed with this statement and 4 persons (or 4 %) disagreed).

The answers revealed that, in the opinion of respondents, management skills and operational skills of prosecutors and LEAs are at a good level; on average only 6 respondents (or 7 %) have the opposite opinion regarding these statements.

More than a half of respondents think, that Moldovan authorities, responsible both for prevention and pre-trial investigation of corruption crimes, have appropriate mandates and mechanisms for national and international cooperation, related to the prevention of the corruption crimes (on average 56 % agree with relevant statements and 9 % disagree).

#### *Laws and regulations*

The analysis of answers revealed that the majority of respondents do not see any significant problems, gaps or discrepancies in the legislation related to the fight against corruption.

More than a half of respondents expressed the opinion, that:

- the legal framework of Moldova clearly states what are considered corruption crimes (81 persons or 88 %);
- the legal framework for criminalization of corruption crimes is appropriate and easy to apply (60 persons or 65 %);
- the scope of the CPC for the prevention and investigation of corruption crimes is appropriate and easy to apply (49 persons or 53 %);
- the national legal framework for prevention and investigation of corruption crimes is properly applied in Moldova (59 persons or 64 %);
- the legal framework related to international cooperation for corruption investigation is appropriate and easy to apply (33 persons or 36 % agreed and 47 persons or 52 % were neutral to this question);
- for the purpose of investigation and prosecution of corruption crimes legislation provides authorities effective powers to obtain documents and information from other authorities (52 persons or 57 %);
- the legislation defining the mandate of authorities to investigate corruption crimes is appropriate (68 respondents or 75 %);
- in order to avoid overlap of activities the legislation defines clearly what are the responsibilities of different authorities (59 respondents or 65 %);
- the risk-based approach in Moldova is applied for the prevention of corruption (52 persons or 55 %).

#### *Organization of work and trainings*

The majority of the respondents (more than 80 %) know, that there is a performance assessment procedure/process in use (annual performance assessment discussion between the superior and the employee) and competency requirements for job-profiles in his/her organization.

More than 75 % of respondents specify that they have practical and theoretical training programs available in their organization that deal with corruption; on average 13 % of respondents disagree with this statement, 8 % – do not know about such programs.

From the experience of 54 respondents (or 59 %), the previous training on fighting against corruption crimes has been sufficient; the rest of the respondents (38 persons or 41 %) have the opposite opinion. Almost the same number of respondents (55 persons) specify, that the level of previous training on fighting against corruption crimes has been appropriate; 37 respondents think that it has been too general.

52 respondents (or 57 %) point out that they need basic training on investigation, prosecution, or court proceedings of corruption and 13 respondents (or 14 %) point out that they don't. According to 64 respondents (or 9 %), joint training in the field of corruption investigation should be organized for the judicial authorities and the authorities responsible for pre-trial investigation; only 3 respondents (or 3%) think the opposite.

The answers show, that the greatest need for training is in such areas as investigation techniques on corruption (62 respondents or 68 %), use of analysis software (51 respondents or 56 %), EU legislation on financial crimes, money laundering, terrorist financing and corruption (46 respondents or 51 %).

The respondents' most desirable duration of the training – 3-5 working days (44 persons or 48 % of respondents) or 1-2 working days (29 respondents or 32 %).

#### *Other questions*

The majority of respondents (on average – 43 %) answered neutrally to the questions whether the public sector and the private sector/business has sufficient knowledge on the effects and scope of corruption in Moldova.

42 respondents (or 46 %) agree that the citizens of Moldova have sufficient knowledge to which authority they should report alleged corruption cases; 26 persons (or 28 % of respondents) have the opposite opinion.

## **8. CONCLUSIONS AND RECOMMENDATIONS**

### **8.1. General conclusions**

- (1). Prevention of corruption related crimes is a key tool, which along with criminalization and law enforcement contributes to fight against corruption. While numerous policies as well as legal and institutional measures to prevent corruption and enhance integrity are developed, their effectiveness and practical implementation remain important challenges until now.
- (2). Prevention should be result-oriented and accompanied by coordinated measures on a wider scale. The grounds for adopting such measures should be analysed in detail.
- (3). The principle of independence when investigating criminal cases should be perceived not as some sort of a privilege but rather as an obligation and – first and foremost – a prerequisite for securing the protection of human rights and freedoms as well as the trust in law enforcement agencies. The essence of this principle is that law enforcement agencies shall investigate matters submitted before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, either direct or indirect, from any party or for any reason whatsoever.
- (4). The workload of the officers from NAC and the prosecutors from APO is too high so this could contribute to the negative quality of crime investigations.
- (5). Assets recovery office is a newly established unit at NAC but it seems that they do not have sufficient resources to provide comprehensive support for corruption investigations.
- (6). It seems obvious that the resources are insufficient to provide well-needed support to all cases of corruption. ARO's current locations might hinder its cooperation with other agencies.
- (7). Money Laundering Unit (FIU) is currently located at NAC. The common view of the anti-corruption agencies seems to be that there is no need to cooperate with FIU. In fact, FIU's potential to support anti-corruption work is not sufficiently exploited.
- (8). It is an obvious need of raising the awareness of anti-corruption practitioners on FIU's important role, as well as its potential support for different stakeholders in the fight against corruption.
- (9). Tax Administration is not considered as an important stakeholder in the fight against

corruption in Moldova.

- (10). Lack of strategic analysis and intelligence-led policing is hindering anti-corruption practitioners' capability to effectively fight corruption at all levels of society.
- (11). Awareness of the mentioned tools should increase at least at the decision-making level. This would support correct allocation of relevant resources.
- (12). Staff checking is very important for ensuring the transparency of office.
- (13). It could be further analyzed whether current legislation provides unreasonable barriers for investigators to execute investigative tasks.
- (14). The investigation plans currently used for large-scale corruption cases should be further analyzed in order to determine whether this fulfils the standards of the European best practices.
- (15). Early involvement of prosecutors who are competent for the investigation of corruption-related crimes and play the leading role in corruption investigation allows to increase the quality of cases.
- (16). Skills and personal qualification of anti-corruption investigators and prosecutors is a key to successful and unbiased anti-corruption investigations. Experience, competences and knowledge of all agencies participating in investigating corruption-related crimes should be improved.
- (17). Enhanced common efforts to ensure actual inter-institutional cooperation and mutual trust to combat corruption, to increase transparency in decision-making process and to reduce the bureaucracy could significantly improve the results in the fight against corruption and the reassurance of the rule-of-law.
- (18). Current organizational reforms (MIA, FIU, and CPC) and planned legislative changes complicates the evaluation process.

## **8.2. Recommendations**

### **8.2.1. Recommendations concerning independence**

- (1). The principle of independence entitles and requires the law enforcement agencies to ensure that the criminal proceedings are fairly conducted and that the rights of the parties are respected. It is the duty of each State to ensure independence of law

enforcement activity and provide adequate resources to enable it to properly perform its functions.

- (2). Selection, recruitment, appointment, and disciplinary process have a direct bearing on the aspects of impartiality, integrity and independence. The current system for selection, recruitment, appointment, promotion, disciplinary processes should be reviewed in all institutions with a view to strengthen the decisive influence of heads of institutions/divisions/units in these processes.
- (3). Independence of institutional activity includes financial independence as well. Even though the Law on Specialized Prosecutor's Office provides that the budget of the specialized prosecutor's office shall be reflected separately in the budget of the prosecutor's office and administered by the chief prosecutor of the specialized prosecutor's office, in practice there is no actual possibility for the chief prosecutor of APO to administrate the budget. The reasons of that should be analyzed in detail and the situation should be changed.
- (4). The independence of the law enforcement institution is closely linked to the grounds for dismissal of the head of this institution. Such grounds for dismissal must be clear, unambiguous and substantiated. The heads of law enforcement authorities should not be changed when changing the political power in the country and for objective reasons in the absence of such change. It is advisable to assess the legal provisions establishing the grounds for dismissal of heads of NAC's leadership as well as other specialized anti-corruption divisions.
- (5). The Law on the Prosecutor's Office provides that applicants for prosecution and the chief prosecutor's office must be checked by a "lie detector". Such an inspection is usually carried out by the specialist of other institutions. It is recommended to assess whether the use of a lie detector in dealing with prosecutors' career issues does not violate the principle of prosecutor's independence.
- (6). In order to ensure greater independency for the officers of the Customs Service who detect and investigate disciplinary offences of the staff, should be considered the possibility of developing special procedures of appointment, dismissal, attestation, and sanctioning of such officers.

### **8.2.2. Recommendations concerning the competences**

- (1). Amendments of the legislation/other regulatory enactments should be initiated in order to enable the delegation of investigations of small-scale corruption cases which

have been investigated by NAC to territorial prosecutors' offices (such mandate could be given, for example, to the Chief Prosecutor of APO).

- (2). The conflict of competences of specialized prosecutor's offices when handling corruption-related crimes still exists. It is recommended to review the current legal framework in order to settle this issue.
- (3). Legal regulation related to the transfer of corruption investigations initiated by agencies other than NAC, APO from one specialized prosecutor's office to another should be reconsidered in order to make this more effective.
- (4). It should be considered the delimitation of competences of specialized prosecutor's offices when corruption crimes are identified at the Ministry of Interior and the Customs Service.
- (5). MIA conducts disciplinary investigations in corruption, abuse of power and excessive use of force cases. The GPI handles the remaining cases. In order to make these processes more effective, the competences of MIA and GPI in performing disciplinary investigations should be clearly allocated.

### **8.2.3. Recommendations concerning decision making policy**

- (1). APO and NAC deal with a large number of pre-trial investigations in corruption cases – in comparison with relevant figures in EU Member States. They perform a wide spectrum of corruption investigations, so investigators have a heavy workload. There should be some specific methodology with clear priorities.
- (2). The legal basis has to be evaluated and followed-up by proposals about creating a methodology with priorities on corruption investigations.
- (3). NAC, MIA and GPI perform discrete corruption prevention measures; however, the whole activity in this field must be more coordinated in an effective way in order to reduce corruption.
- (4). NAC's analytical research methods should be used more widely not only when carrying out the investigation into corruption-related acts, but also for prevention of these acts.
- (5). During the investigation of crimes of corruption, it is recommended to NAC to give access to operational information to other directorates so that they could exercise their direct functions.



- (6). The general principle is that the officer of the Assets Recovery Agency coordinates its actions with the prosecutor who leads the pre-trial investigation. But, as regards the prosecutor's role to the Agency, it is worthy to be mentioned that the Agency carries out its functions inside the NAC and that the NAC's activities are coordinated by APO's prosecutors. In such circumstances, it is worthy to define the functions of the prosecutor in relation to the agency' activities.
- (7). The proactive role of NAC. NAC must take a leading role in boosting co-operation activities. A step in this direction might be the creation of an advisory committee on anti-corruption, which will comprise business representatives and any related authority. The Committee may be either a separate initiative of NAC or a sub-component of other larger entities (e.g. Economic Council of the Prime-Minister). The Committee should become a dialogue platform between the private and the public sectors, where parties would examine issues related to corruption. In this regard the experience of other authorities which have created similar committees (e.g. RIA Working Group of the Ministry of Economy) might serve as a good example.
- (8). NAC, MIA and GPI affirm that their staff is verified before appointment to office and before promotion. In such cases, it was noticed that there is insufficient exchange of information between the law enforcement agencies. This issue should be settled by using a more efficient mechanism of inter-agency exchange of information.
- (9). It is recommended to draw up methodological recommendations for the staff of all beneficiary institutions on the actions to be taken if the employee, while exercising his/her direct functions, identifies elements of active corruption.
- (10). To implement a modern management culture in all institutions.
- (11). To implement intelligence-led policing ideas in the planning and leading spheres. Intelligence-led policing can be defined as a policing philosophy that follows a business or managerial model of operating an organization. Intelligence-led policing allows police departments to utilize data and information in order to better evaluate crime trends and issues, thus allowing top decision makers to efficiently and effectively allocate resources and develop crime fighting strategies. In other words, police departments can incorporate a decision-making system where information about crimes, crime trends, and specific groups of offenders is analyzed and then paired with executive strategies to properly direct ground-level officers' actions and resources in a specific and targeted effort for the sole purpose of reducing, eliminating, and preventing specific crime issues and offenders. Key elements in intelligence-led policing are: 1) Planning – Efficiency of Work in our environment 2) Systematized flow of data/ information and a standard set of tasks that need to be completed step by step 3) Documentation (flow chart, SOP) 4) Gaps, Limitation and Development.

(12). To implement a culture of delegating responsibilities within the departments or units in the institutional management sphere. Leaders having a hard time delegating tasks often use the excuse that they just want to be sure that things are done in the right way. Unfortunately, the signal being sent to the workers is that they are not trusted to do the right thing, so the culture within an organisation turns into one of apathy. Trust and delegation go hand in hand because when you delegate something to another person you are demonstrating your trust that the individual will do what is right. By taking the risk of delegating more tasks, leaders can foster an environment of higher level of trust.

#### **8.2.4. Recommendation concerning structure and organization**

(1). A detailed assessment of the functions performed by the beneficiaries' structural units should be carried out in order to avoid overlapping of functions, to abolish non-specific functions and ensure proper and effective communication and exchange of information between them.

#### **8.2.5. Recommendations concerning interagency cooperation**

(1). There are quite a lot of signed agreements between law enforcement agencies, however, in practice there is lack of real co-operation between them. Sharing of information between separate offices seems to be declarative and this must be improved.

(2). Disposal of operational information in real time is a very important element in fighting against corruption and effective performance of investigations. Mutual trust within institutions and between cooperative agencies as well as all actors fighting corruption in Moldova must be improved.

(3). It should be considered better exchange of information between APO and institutions, which provide initial information on the criminal cases. This may ensure the follow up on the quality of initial information/material collected.

(4). It should be strengthened further co-operation between the Assets Recovery Office and the law enforcement institutions with a particular focus on tracing of assets and providing the follow-ups. As well, raise awareness about the Agency' activities among relevant law enforcement institutions and agencies.

(5). It is recommended to draft the Agreement between the Customs Service and the

Border Police concerning co-operation in detection and investigation of alleged corruption acts of the officers.

- (6). The participation of SPIA representatives, such as the head of SPIA or head of the specialized subdivision conducting special investigative activity, at the meetings of the Coordination Council (Coordination Council activity based on Council Regulation to coordinate the special investigative work approved by the Prosecutor General's Order No. 82/6 of 30/11/2012) should be reconsidered.
- (7). It is recommended to create a legal mechanism of timely and effective exchange of information between beneficiary institutions according to which the state authority, upon detecting the elements of possible disciplinary violation of the official serving in another institution, should transfer such information to the institution where such an official is serving.
- (8). Internal policies for economic agents. NAC should stimulate economic agents to implement internal policies oriented at preventing and monitoring internal corruption acts. The policies in question should be simple in implementation and involving no costs but they must be effective. In practice, it is recommended that NAC developed the template of a checklist which will include the main aspects to be implemented by an economic agent. This document will not only serve as a mechanism to check the level of implementation of policies but also as a training tool for economic agents.

#### **8.2.6. Recommendations concerning institutional capacities**

- (1). To set out priority areas for action, focusing on large-scale corruption cases, corruption in the most vulnerable areas, corruption on high-level officials and politicians, etc.
- (2). To develop a methodology that enables to evaluate operational efficiency and a workload of the beneficiary institutions in the field of prevention and investigation of criminal acts of corruption. Specific and objective evaluation criteria should be set up and they should not be limited to the number of handled corruption cases or any other statistical indicators. This activity is crucial and may allow reallocating current human and financial resources.
- (3). It is recommended to further strengthen the specialization of prosecutors.
- (4). APO prosecutors should exchange the best practices in prosecution of corruption cases, participate in continuous training, including personal capacity building

training. This may help to form a unitary practice and increase the quality of prosecutions.

- (5). It would be purposeful to create the position of analyst, specialist of IT and forensics at APO so that it would be possible to take better advantage of analytical research methods and specialist knowledge when prosecutors investigate corruption-related cases.
- (6). Assets Recovery Agency should be provided with the sufficient human and financial resources for implementing the mandated functions.
- (7). To organize continuous training for anti-corruption practitioners of all beneficiary institutions in the field of prevention and investigation of acts of corruption, delimitation of duty violations and criminal deeds.
- (8). To organize trainings of leadership and management for staff in managerial positions.
- (9). To revise the quantity of staff dealing with investigation of acts of corruption. Residual number of unfinished corruption cases at the beginning of the reporting period is specified in the activity reports of APO and NAC for the year 2017. These figures allow noticing a heavy workload falling upon the prosecutors of APO and criminal investigators of NAC. As we know, protracted criminal proceedings reduce public confidence in law enforcement agencies.
- (10). According to the statistical data provided by APO, there is some indication that the priority is given to the prosecution of passive corruption cases. In this regard, further efforts should be taken ensuring a more proactive approach towards the prosecution of the cases of active corruption. There might be a need for guidelines or manual in relation to opening and necessary investigative steps in cases of active corruption.
- (11). To ensure sufficient technical measures necessary for prevention, detection, investigation of acts of corruption, including access to useful databases and timely exchange of information between different LEAs.
- (12). Further develop e-case system, with additional functionalities related to the analysis of information, control of criminal procedure, information exchange with courts and other law enforcement institutions.

### **8.2.7. Other recommendations**

- (1). The use of media to influence public opinion and put pressure on anti-corruption investigations is an important concern in many countries. It is important that anti-corruption investigation and prosecution institutions proactively informed mass media. The latter plays an important role in prevention, awareness-raising and building of public trust in law enforcement.
- (2). Public relation strategy should be created.
- (3). Communication with mass media trainings should be organized.
- (4). To the GPO it is recommended to draw up guidelines for a more efficient cooperation with ARO.
- (5). ARO should start the activity on assets management as soon as possible.