

Report

No.2

Disrupting Dysfunctionality: Resetting Republic of Moldova's Anti-Corruption Institutions



Independent Anti-Corruption
Advisory Committee

Disrupting Dysfunctionality: Resetting Republic of Moldova's Anti-Corruption Institutions

This publication was produced with the financial support of the European Union and the U.S. Department of State Bureau of International Narcotics and Law Enforcement Affairs. Its content represents the sole responsibility of the Independent Anti-Corruption Advisory Committee, and does not necessarily reflect the views of the European Union or the U.S. Department of State.

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Chisinau, November 2022

The Independent Anti-Corruption Advisory Committee (CCIA) was established in June 2021 by Presidential Decree as an independent body composed jointly and equally of prominent members of Moldova's civil society and international anti-corruption and related experts. Its main purpose is to analyse systemic corruption issues that cut across Moldovan institutions and improve implementation of anti-corruption measures by appropriate stakeholders.

The Committee performs research which is made public. Its recommendations are designed to optimize the effectiveness of the efforts of the Republic of Moldova in the fight against corruption. Subsequently, the CCIA assesses the implementation of such measures by state actors and other stakeholders in subsequent periodic published reports.

The CCIA's mission is to strengthen Moldova's understanding of general and specific issues with respect to large-scale corruption and enhance the authorities' capacity to take appropriate action to reduce, and one day to eliminate the burden of the problem on the citizens of the country.

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Background

This report provides an overview of the anti-corruption and integrity architecture of the Republic of Moldova. It examines perceptions and realities, past and present institutional efforts and the policies underlying them, as well as, current legislative and organizational challenges institutions face. The assessment looks into potential duplication of and gaps in efforts, the need for improved cooperation and potential restructuring in the short-, medium- and long-terms.

The need to assess the mandates and actual performance of Moldovan anti-corruption institutions emerged from the periods and circumstances when the economic and political power was concentrated in the hands of a narrow group of the political elite. There was insufficient investigation of the “Bank Fraud” and Russian Laundromat cases, which allowed systemic and endemic corruption to metastasize among state bodies, including, especially, those under review. It is essential to understand how the state reacted in this regard, against the excessive politicisation of state institutions and, more recently, strategic corruption threats generated by illicit economic transnational networks.

The Republic of Moldova formally applied on 3 March 2022 to join the European Union. During the European Council on 23 June 2022, EU leaders granted EU candidate status to the Republic of Moldova¹. Over the past thirty years, the country endured economic collapse, extensive brain drain, poverty, endless political strife and endemic corruption at all levels. Privatisation led to massive misappropriation by politicians and public officials. Bureaucrats were used by several individuals who managed to illegally appropriate state properties and grow into oligarchs. By the end of 2019, some began to refer to this phenomenon as state capture². The 2001–2009 Communist period strengthened monopolistic schemes/exclusive control over commercial activities, spread the ‘telephone justice’ phenomenon³, strangled business initiatives and isolated the country externally.

A period of enthusiasm followed the 2009 elections when the Alliance for European Integration came to power. This government exerted considerable effort towards ratification of the Association Agreement with the European Union and the visa free travel regime in 2014; embarked on justice reforms, claimed “zero tolerance” of corruption, and proceeded towards harmonisation of the country’s legal framework to the EU acquis. Through all these actions the Republic of Moldova became “the success story of the Eastern Partnership”⁴. Nevertheless, the resultant optimism was dramatically shaken by the Bank Fraud and the Russian Laundromat⁵. Both showed that the political establishment as well as functionaries were resistant to the reforms they had promulgated, and corruption schemes, cronyism and nepotism flourished, all of which combined in a relatively short time frame to put the country firmly in the grip of oligarchy.

The justice reforms initiated in 2011 led to very modest results in spite of considerable budgetary investments and support from development partners. Despite the adoption of an ambitious Justice Sector Reform Strategy (JSRS) and subsequent efforts in its implementation, some representatives of the state administration, financial regulators, law enforcement, and legal professionals have been active or passive

¹ *Conclusions of the European Council*, adopted on 23 June 2022: <https://www.consilium.europa.eu/en/press/press-releases/2022/06/23/european-council-conclusions-on-ukraine-the-membership-applications-of-ukraine-the-republic-of-moldova-and-georgia-western-balkans-and-external-relations-23-june-2022/>.

² *State Capture: the Case of the Republic of Moldova*, Transparency International-Moldova, Association for Participatory Democracy, Legal Resources Centre from Moldova and IDIS “Viitorul”, 2017, https://www.transparency.md/wp-content/uploads/2017/06/TI_Moldova_State_Capture.pdf.

³ Under which government officials instructed judges how to decide particular cases. *The Rule of Law in Moldova*, International Commission of Jurists, 2004, paragraphs 113-121, www.icj.org/wp-content/uploads/2004/11/Moldova-rule-of-law-factfinding-report-2004.pdf.

⁴ *Moldova’s success story, The visa-free regime with the EU one year on*, Jakub Benedyczak, Leonid Litra, Krzysztof Mrozek, 2015, <http://archive.eap-csf.eu/assets/files/Moldova%20success%20story%20-%20policy%20paper%20-%20SBF%20IWP.pdf>.

⁵ The Russian Laundromat and the Bank Fraud in the broader framework of systematized banking and insurance sector fraud, embezzlement, and money laundering are thoroughly explained in “*The Offshore Republic*”. *Review of factors leading to systemic fraud and money laundering in Moldova’s banking, financial and insurance sectors*, the Independent Anti-Corruption Advisory Committee, 2022, <https://ccia.md/wp-content/uploads/2022/07/CCIA-Raport-ENG.pdf>.

actors, complicit in or witnesses to major financial and banking frauds and criminal investigations unduly influenced by politically exposed persons.⁶ Deeply rooted corrupt interests resisted efforts to increase transparency, accountability and reliability of the system.

Although low salaries of judges were increased to reasonable scale, those of prosecutors were – and are – left with much lower income. Judicial assistants were introduced in all courts allocated per judge. Salaries per non-judge court personnel remained low. Courts were (and are) continuously struggling with high turnover of staff and lack of skilled candidates. Institutions were (and are) not strong enough to resist attacks.

In June 2019, the Parliament adopted a declaration on the captured state⁷, indicating that “all the citizens of this country are suffocated by endemic corruption, theft and (...) total control over the judiciary, exercised by the oligarchy and by the numerous attacks on civil rights and freedoms.” The new government included justice sector reform as one of its top priorities. The dismissal of that government on 12 November 2019⁸ illustrated a high degree of resistance to change by actors within the political system.

On 30 March 2017, the Republic of Moldova adopted the National Integrity and Anti-corruption Strategy which expired in 2020⁹. Only 66 (52%) of its 127 measures had been implemented by mid-2020¹⁰. Later, an extension till 2023 was granted for the remaining 61 (48%) measures then unimplemented. The latest Strategy and the Action Plan for Ensuring the Independence and the Integrity of the Justice Sector for 2022–2025¹¹, adopted by the governing coalition in late 2020, was rejected by the President and returned in January 2021 for review. It was later adopted by the Parliament in December 2021 and was finally approved by the President.

The Anti-corruption Prosecutor’s Office (APO) was created in 2016 to fight high-level corruption, but it has long diverted much if not most of its limited resources to petty corruption. Its track record in high level corruption is scandalously poor.

In 2020, for example, no high-ranking Moldovan officials were convicted and sentenced for corruption. In 2021, one judge was convicted for illicit enrichment by the first instance court but remains in position until the reviews and appeals are exhausted. Judges routinely postponed hearings in significant cases and prosecutors stalled with respect to the advancing investigation of substantiated allegations of

⁶ “The Offshore Republic”. Review of factors leading to systemic fraud and money laundering in Moldova’s banking, financial and insurance sectors, the Independent Anti-Corruption Advisory Committee, 2022, <https://ccia.md/wp-content/uploads/2022/07/CCIA-Raport-ENG.pdf>.

⁷ Decision of the Parliament no. 39 of 8 June 2019, https://www.legis.md/cautare/getResults?doc_id=114796&lang=ro.

⁸ The draft put forward by the Government to delegate part of its plenary powers to the Prime Minister to propose a “short list” of candidates for the Prosecutor General’s position resulted in a motion of no confidence. *The cabinet of ministers led by Maia Sandu was dismissed through the motion of censure*, 2019, <https://romania.europalibera.org/a/republica-moldova-maia-sandu-moti-une-cenzura-guvern-demis/30266114.html>.

⁹ Decision of the Parliament no. 56 on adoption of the *National Integrity and Anti-corruption Strategy 2017-2020* of 30 March 2017, https://www.legis.md/cautare/getResults?doc_id=99502&lang=ro#.

¹⁰ *Report on the Implementation of the National Integrity and Anti-corruption Strategy 2017-2020* (for 2020), National Anti-corruption Centre, 2022, https://www.cna.md/public/files/Raport_SNIA_2020_final_iunie.pdf.

¹¹ Strategy and the Action Plan for Ensuring the Independence and the Integrity of the Justice Sector for 2021–2024, https://www.justice.gov.md/public/files/directia_analiza_monitorizare_si_evaluare_a_politicilor/EN_Draft_Strategy_Ensuring_Independence_Integrity_of_Justice_Sector_2021-2024.pdf. The Strategy was further supplemented with mechanisms for extraordinary evaluation of judges and prosecutors, and for confiscation of assets.

corruption¹². These practices remain in place.

In September 2019, APO withdrew charges against 14 former and current judges accused of money laundering in the Russian Laundromat case, on the grounds that the elements of the offence could not be established. In late October 2020, the Superior Council of Magistracy (SCM) accepted the requests of five magistrates to be reinstated in the positions they had held until 2016 and ordered that they receive back pay for the period during which they were suspended.

A large majority of corruption cases reaching the courts (90%) represents petty corruption with subjects such as individual private citizens, police, lawyers, accountants, and customs officers. Only 7% concerns high-level corruption (judges, prosecutors, high level officials). Although imprisonment represented the most frequently used sanction by judges, eight out of ten convicted persons did not spend a day in jail, because the sentence was suspended. Justice in corruption cases was done within an average of 3.5 years. The fastest case was tried in 138 days, the slowest, more than 12 years.¹³

In 2020, reform efforts resumed. Combating corruption was made a priority, including in the Activity Program of the Government of 2021¹⁴. Measures to be achieved included¹⁵: improved efficiency of prosecutors and courts; initiation of investigations against persons who committed major illegalities; activating the extended confiscation mechanism; adopting legal norms to stop procedural abuses, such as unjustified delays in examining corruption cases; reforming APO by limiting its mandate to high-level corruption; and restructuring National Anti-corruption Centre (NAC). The legal framework for asset- and conflict of interest declarations' verification was improved. Amendments were made to investigate individuals in absentia, to combat the phenomenon of absconding by individuals involved in high-level cases. Legislative changes were followed by changes in leadership of law enforcement institutions. Pre-vetting of candidates for the self-administration bodies of judges and prosecutors was initiated.

Following the European Commission's Opinion on the EU membership application by the Republic of Moldova in June 2022¹⁶, an action plan for implementing proposed measures by the European Commission¹⁷ was approved. It includes, *inter alia*, clear delimitation of the mandate between APO and NAC as to high-level corruption, and improvements to the mechanism of whistleblowing and protection of whistle-blowers.

¹² For example, the case against Ilan Shor (who has been identified as being one of the main beneficiaries of the Bank Fraud after gaining ownership and control of BEM, Banca Sociala and Unibank as a young entrepreneur) has been under examination by courts since August 2016. The translation of the first instance court judgment into Russian (translation for the defendant that apparently does not speak the state language) lasted over six months. Later, the case was transferred from the Chisinau Court of Appeal (the biggest in the country, with 49 judges) to the Cahul Court of Appeal (with eight judges) because a large number of Chisinau judges abstained or were recused, raising questions as to the probity and impartiality of the judges in Moldova's largest court. The Cahul Court of Appeal examined the case from 2 April 2018 to 1 April 2021. Throughout this period, 59 court hearings were scheduled, of which 51 were postponed (because of 10 recusals of judges, 10 failures to present expert opinions ordered by court, five references to the Constitutional Court, etc.). In August 2021, the SCJ sent the case to the Chisinau Court of Appeal. More details at *The Saga of the Shor Case*, Legal Resources Centre from Moldova, 2021, crjm.org/wp-content/uploads/2021/05/05-2021-Epopaea-Dosarului-Sor-EN-7.pdf. The case is still pending. In another case, the court proceedings lasted more than 9 years in the first instance court (see more in *The Gacikevici case: 9 years and 4 months in the first court level. Where is the former president of Banca de Economii and what does he do?*, Anticoruptie.md, anticoruptie.md/ro/dosare-de-coruptie/dosarul-gacikevici-9-ani-si-4-luni-in-prima-instanta-unde-se-afla-si-cu-ce-se-ocupa-fostul-presedinte-al-bancii-de-economii).

¹³ *Report on the application of criminal sanctions in the Republic of Moldova*, Ildir Peci, 2021, <https://crjm.org/wp-content/uploads/2022/05/Report-on-application-of-criminal-sanctions-in-RM.pdf>.

¹⁴ Activity Program of the Government 2021-2022, gov.md/sites/default/files/document/attachments/programul_de_activitate_al_guvernului_moldova_vremurilor_bune.pdf.

¹⁵ *Republic of Moldova – Summit for Democracy*, Written Statement, 7 January 2022, <https://www.state.gov/wp-content/uploads/2022/03/Moldova-Summit-for-Democracy-Commitments-Accessible-03112022.pdf>.

¹⁶ *Opinion on the EU membership application by Moldova*, European Commission, 17 June 2022, https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_3801.

¹⁷ Action plan for the implementation of the measures proposed by the European Commission in its Opinion on the application for accession of the Republic of Moldova to the European Union, National Commission for European Integration, 4 August 2022, https://presedinte.md/app/webroot/uploaded/plan_cnie_04.08.2022.pdf.

FOREWARD

Moldova is struggling with corruption for years, corruption being one of the main obstacles in the country's development. Although the country registered some advancements in the international and national anti-corruption rankings since 2019, these are very fragile especially in the current context of the war against Ukraine and the effect it has on the region and globally in particular in terms of political stability. If Moldova is to make sustainable progress in its fight against corruption, capable institutions to effectively combat corruption are key.

This report looked at the institutional architecture of the main institutions with anti-corruption and integrity mandate in the Republic of Moldova, analysed the data on their performance and staff, relevant assessment reports produced by civil society organizations, as well as the data on population's perception and perceptions and experiences of several individuals working within the analysed institutions, as well as their leadership. The main conclusion of the report is that Moldova has implemented a wide range of measures to prevent and fight corruption, but these have not been accompanied by coherent policies, strict adherence to declared goals by all parties and the measures have been often ineffective, insufficient and poorly executed.

The report highlights the key vulnerabilities as determined by CCIA and recommends more clarity of responsibilities vis-a-vis mandates for investigating corruption based on the nature of the misconduct, in order to increase efficiency and achieve tangible results. It provides a series of recommendations per institution meant to address the major vulnerabilities and improve performance in the long term. The report is by no means a comprehensive assessment of the institutions it covers, and the list of recommendations is not exhaustive either. The report includes the most important recommendations that in CCIA's view should be implemented to strengthen the fight against corruption in the country.

Executive summary

This report details the vulnerabilities found in core anti-corruption institutions and provides recommendations on ways to improve their operation. It touches only briefly on those agencies with a secondary anti-corruption or integrity mandate such as the Service for Internal Protection and Anti-Corruption of the Ministry of Internal Affairs (MIA), the Prosecutor General's Office¹⁸, Prosecution for Combating Organised Crime and Special Cases (PCOCSC)¹⁹, Security and Intelligence Service²⁰ as well as SCP and SCM.

The CCIA has analysed the current architecture of the anti-corruption institutions in the Republic of Moldova and found severe dysfunctionality over time till the present, such as:

- Inter-institutional cooperation within the country is weak, as well as cooperation with other countries and specialized international organizations in investigating corruption and asset recovery.
- APO and NAC are institutionally weak. By merely changing leadership but without improving capacity, ensuring their independence and observance of the law and their mandates, it is impossible to render them fully functional.
- APO has not functioned properly due to an improperly defined and inadequate mandate, limited functional, operational and financial independence as well structural tensions between APO and NAC, at the level of their leaders and staff.
- A strong and destructive dependency of APO on the Prosecutor General (PG) and his/her office was identified.
- In APO different prosecutors work on the same case from the pre-trial phase to court examination. At different court levels, the same case is taken by other prosecutors than APO ones.
- APO has an insufficient number of investigative officers, criminal investigation officers and support staff (e.g., subject matter specialists and interpreters/translators).
- APO and NAC leak information on high-profile cases.
- The law enforcement institutions under review have given little if any formal consideration to their own strategic development, effective risk management, and ways to improve or streamline their activity.
- In NAC, too much effort and resources have been invested in an ineffective corruption prevention function. Its role in review of legislation from the anti-corruption perspective takes time and effort which should be focused on investigating corruption. NAC's mechanism of integrity testing of individuals and institutions has had little positive impact; at the same time, its abuse, real or perceived, raises serious concerns as to its continued practice.
- Criminal Asset Recovery Agency (CARA) has no mandate to carry out financial investigations²¹ post-sentence.
- Until recently, the mandate to verify and sanction breaches of the assets and interests' disclosure has been split among several institutions. Of late, National Integrity Authority (NIA) gained full control over this process. However, implementation has lagged, with improvement in results still to be seen.

¹⁸ The Service for Internal Protection and Anti-Corruption of MIA is investigating corruption cases within the police. The Prosecutor General's Office leads, controls, organizes and coordinates the activity of specialized and territorial prosecution offices.

¹⁹ The Prosecution for Combating Organised Crime and Special Cases is mandated to combat organized crime, terrorism and torture.

²⁰ The Security and Intelligence Service collects, processes, verifies intelligence information and performs counter-intelligence activities.

²¹ In the Moldovan legislation, CARA's mandate is to carry out "parallel financial investigation" provided in Article 6 point 20¹ of the CPC and Law on CARA. For the purposes of this paper, the term "financial investigation" shall be used because the term is more comprehensive.

- NIA's methodology for asset verification is poor, as is court practice with respect to the burden of proof and standards for justifying questionable wealth. NIA also has no clear strategy to prioritize high level officials and cases with significant discrepancies between the declared and the de facto wealth of the declarants.
- Annual reports and statistics of APO, NAC and NIA are poor and insufficiently analysed. The information presented is contradictory among the institutions. Data presented in reports prepared at different times from different offices within the same institution are also contradictory. Much of it is incomprehensible to the wider public.
- The staff of APO, NAC, CARA and NIA are insufficiently remunerated. This leads to low morale and excessive, chronic turnover of personnel, understaffing and the loss of expertise, experience and institutional memory.
- Courts are selective in holding public hearings in high-profile cases. This lack of transparency lends itself to a climate of suspicion of judges, including that the wealthy or politically connected receive special treatment. Also, decisions on integrity issues are inconsistent, varying from one court to another.

Recommendations

1. Parliament should provide APO with the mandate to conduct criminal investigations on the following (within 3 months):
 - a. Crimes provided by Criminal Code Articles 181¹- 181³, 239¹, 240, 243, 324–328, 330², 332–335, irrespective of the value of the bribe or damage committed by the subjects indicated in the Article 270¹ para. (1) p.1 of the CPC (which includes high-ranking officials and other special subjects). The list of subjects should be amended as follows:
 - 1) To include leadership of political parties, managers of international funds and managers of public funds;
 - 2) "Persons representing the management of state enterprises and joint stock companies with the state's majority shares and persons representing the management of commercial banks" to be replaced with "Leadership, members of the council, executive body and censorship commission of state-owned enterprises, corporation with majority state capital and commercial banks";
 - 3) To exclude bailiffs from the list.
 - b. Crimes provided by Criminal Code Articles 190 and 191 committed by the subjects above by using official position above a damage of EUR 20,000 / 7,720 conventional units.
 - c. Crimes committed in a) and b), regardless of the subject, if the amount of money, value of goods, services, privileges, advantages or any benefits requested, promised, accepted, offered, given or received exceeds EUR 20,000 / 7,720 conventional units.
 - d. Crimes provided by Criminal Code Articles 236 – 239², 242¹-242³, 250, 252-253, 329 regardless of the subject and above a damage of EUR 200,000 / 77,220 conventional units.
2. Parliament should amend APO's mandate to exclude supervision of criminal investigations conducted by NAC. The criminal investigations conducted by NAC shall be supervised by prosecutors from the territorial offices where NAC offices are located. (3 months)
3. Parliament should amend the relevant legislation to include the prosecution office among the authorities entitled to carry out special investigation measures. (3 months)
4. Parliament should abolish Article 307 of the Criminal Code, which refers to wilfully rendering a judgement, sentence, decision or ruling in breach of the law. (3 months).
5. Parliament should amend the Law on Specialized Prosecution Offices to allow the heads of the specialized prosecution offices to select their own teams of prosecutors. The appointment of prosecutors to APO is to be carried out through an interview, conducted by a special commission created within APO, based on the request of the chief prosecutor of APO, addressed to the SCP (3 months).
6. Parliament should amend legal provisions to provide the chief prosecutor of specialized prosecution offices with the authority to employ specialists (banking, IT, finance and tax, auxiliary staff etc.), interpreters, translators, and others as needed. The APO chief is to be empowered to employ criminal investigation officers and investigative officers for a five-year renewable mandate. The criminal investigators and criminal investigation officers in APO should enjoy a similar status to those in NAC. (3 months)

- 7.** Parliament should amend legislation to ensure that the PG carries out oversight of specialized prosecutors' offices only through the chief prosecutors of these institutions. The PG must not have any authority to remove case files from specialized prosecutors' offices or to assign them cases that are not within their mandate. Also, specialized prosecutors' offices must have a clear and exclusive mandate that would block arbitrary decisions as to which cases to keep and which to send to other prosecutors' offices. (3 months)
- 8.** Parliament should provide APO with the necessary legal standing and status of secondary budget holder and provide sufficient staff to administer APO's budget. (3 months)
- 9.** Parliament, PGO and APO should ensure that the budget and the staffing table of APO allow for the following to be included in APO:
 - a.** A department to carry out special investigation measures, including surveillance measures such as wiretapping and physical observation. For efficiency purposes, the currently existing resources in NAC should be divided between NAC and APO to ensure a prompt and effective implementation of this recommendation regarding APO. (3 months);
 - b.** An intelligence analysis department. Similar to the above, the existing resources in NAC should be divided between NAC and APO to ensure a prompt and effective implementation of this recommendation regarding APO. (3 months);
 - c.** Departments on communications, human resources, finance and budget. (3 months).
- 10.** Parliament should amend legislation to provide adequate attractive remuneration for APO prosecutors and other staff and put in place proper incentives, including for those transferred or temporarily exercising their office duties outside their places of habitual residence for the period of exercising the mandate. (18 months)
- 11.** PGO and APO should ensure, as a rule, that the same prosecutor who conducted the criminal investigation of a case represents it throughout all court proceedings. (3 months)
- 12.** APO should carry out an assessment of its current state, looking at efficiencies in policies and practices, streamlining, capacity gaps and other needs. This should inform and result in the preparation of a strategic operational medium-term plan. (12 months)
- 13.** APO should carry out an assessment of human resources and any staffing gaps necessary to handle the workload in line with its mandate. The PG and SCP should expeditiously review and meet the needs, as appropriate. (6 months)
- 14.** APO should develop and request a fully justified budget to allow it to carry out its mandate effectively. (12 months) The PG and the Parliament should normally expeditiously review and approve such a request. (12 months)
- 15.** APO should take all necessary steps to block leaks, and publicly identify and punish offenders. (immediate and continuous)
- 16.** APO should improve the quality of its statistical data collection and analysis. This should be reflected in all its activity reports. (next annual report)
- 17.** APO should improve its public outreach, explaining the results of its work, including its decisions to close or not to open or pursue investigations in certain, especially high-profile corruption cases. (immediate).

- 18.** Parliament should amend the Law on NAC and other relevant legislation to limit NAC's mandate to investigating systemic and, for a transitional period, petty corruption, and remove other functions from its mandate (i.e., prevention/awareness raising, anti-corruption review and institutional integrity evaluation). Systemic and petty corruption should include all corruption and corruption related offences that are not in APO's exclusive competence (3 months). The following current NAC competencies are recommended to be transferred or amended as follows:
- a.** Anti-corruption review should be transferred to MoJ;
 - b.** Corruption prevention awareness raising efforts should be transferred to NIA;
 - c.** Institutional integrity testing should be abolished and Integrity testing should be maintained only as an internal tool for hiring and/or disciplinary purposes within the law-enforcement institutions;
 - d.** NAC's staffing table should be adjusted accordingly.
- 19.** NAC should assess what constitutes petty corruption in Moldova's context and present to Parliament a clear delineation between systemic and petty corruption in order for the latter to amend the legislation accordingly by assigning petty corruption to MIA for investigation. (24 months)
- 20.** Parliament should provide adequate, attractive remuneration for NAC staff. (18 months)
- 21.** NAC is to retain and strengthen its intelligence analysis and active corruption prevention/administrative investigation of integrity breaches. (immediate and continuous)
- 22.** NAC should take determined action to stop leaks. (immediate and continuous)
- 23.** The National Institute of Justice and Police Academy should allocate appropriate resources to train sufficient staff (prosecutors, criminal investigation officers and criminal investigators) to examine petty corruption cases, with the involvement of expertise from APO and NAC. (12 months)
- 24.** Development partners should help NAC in capacity building on investigating systemic corruption, especially regionally, and help increase the capacity of the MIA staff to be able to properly investigate petty corruption cases. (immediate and continuous)
- 25.** Parliament should introduce by law the mandate for CARA to carry out financial investigations during court examination and post-sentence. (6 months)
- 26.** Parliament should provide attractive remuneration for CARA staff (18 months).
- 27.** CARA is to remain under NAC for up to two years, subject to an independent assessment of its performance. Thereafter, pending positive evaluation, the institution should become independent from NAC and should have the complete mandate to handle asset recovery in all high-level criminal investigations. (24 months)
- 28.** CARA should explore additional mechanisms to help recover stolen assets abroad, including through the hiring of foreign law firms and private consultants on an as needed basis. (immediate and continuous)
- 29.** CARA should identify its needs for capacity building. (6 months)
- 30.** Development partners should support CARA's capacity building efforts. (12 months)

- 31.** NAC and CARA should request sufficient financial resources to be able to employ private law firms to help recover assets in other states. The Parliament should normally approve such a request. (12 months)
- 32.** Courts should immediately inform CARA on final decisions on confiscation. (12 months and continuously thereafter)
- 33.** Parliament should abolish the integrity certificates introduced by Article 31¹ of Law no. 82 on integrity in 2018. (6 months)
- 34.** Parliament should strength NIA's mandate with corruption and integrity prevention activities. (12 months)
- 35.** Parliament should provide adequate attractive remuneration for NIA staff. (18 months)
- 36.** NIA and the Integrity Council should develop and approve an institutional development strategy with measurable outcomes and impact. (immediate and continuous)
- 37.** NIA needs to strengthen its internal analytical capacity for analysis of data from official databases and open sources domestically and abroad. (immediate and continuous)
- 38.** NIA should continue efforts towards developing and updating electronic mechanisms for automatic verification and cross checks with official databases. (immediate and continuous)
- 39.** NIA should develop and improve verification capabilities with the aim of reaching the ability to verify in-depth a minimum of 10% of the total number of declarations per year. (immediate and continuous)
- 40.** NIA should better define and improve the methodology on asset verification. (6 months)
- 41.** NIA leadership should drastically improve supervision and oversight of integrity inspectors, including in the implementation of the methodology of Verification of Assets and Personal Interest and on Conflicts of Interest, Incompatibilities, Restrictions and Limitations. (immediate and continuous), and, among others, the establishment of timelines for reviews and proportional actions for underperformance.
- 42.** Annual reports of NIA should be more informative, developed in a manner to support their comparability with previous years. The report should be user-friendly, with its analysis and findings presented in form and substance accessible to the general public. (next annual reports)
- 43.** NIA should keep track of case law on integrity and establish a mechanism for discussing issues of legal interpretation of integrity related provisions with the Supreme Court of Justice. (immediate and continuous)
- 44.** NIA should cooperate with the National Institute of Justice on training of judges and prosecutors on integrity issues. (immediate and continuous)
- 45.** NIA should develop a strategy and action plan for communication with the public and the mass media, including presentation of its results, information campaigns on the essence of the conflict of interests, incompatibilities, etc. All work products in this regard should be written in language accessible to the general public and designed in user-friendly formats. (immediate and continuous)
- 46.** FIU needs to remain independent. The current operational formula has proven to be correct and functional.

- 47.** The National Institute of Justice and international community should ensure that legislative amendments in the anticorruption field are followed by targeted trainings for judges and other actors within the system. (immediate and continuous)
- 48.** Parliament should amend legislation to ensure that all cases (criminal, civil, administrative, misdemeanour) continue while any constitutional issues are under review. (5 months)
- 49.** The Parliament should amend legislation to provide that the statute of criminal liability or limitation no longer applies after the case is sent to court. (5 months)
- 50.** Courts should hold public court hearings in all high-profile cases, with exceptions made only under circumstances required by law and in conformity with the established procedure. (immediate and continuous)
- 51.** Courts should ensure a unified caselaw on integrity issues. (immediate and continuous)
- 52.** The SCM and Agency for Court Administration should ensure the proper application of the rules regarding anonymity of court decisions and reduce excessive anonymity. (immediate and continuous)
- 53.** All institutions with primary anti-corruption mandate should prioritize improving cooperation with all relevant national institutions, including by developing guidelines for cooperation to help them implement their mandate in an effective manner.
- 54.** All institutions with primary anti-corruption mandate should seek to improve their abilities to cooperate with other countries and specialized international organizations such as EUROJUST to effectively carry out their mandate.

Chapter 1. Analysis of Primary anticorruption and integrity institutions

The state institutions established to protect the country from illegal, malicious, damaging and deceitful activity kept quiet or even contributed to covering up the Bank Fraud and Laundromat events and other important criminal activities. Not only did law enforcement fail to react promptly to stop the crimes from occurring or recurring, but after almost ten years many perpetrators are still at large²². The analysis below outlines systemic failures and provides recommendations as to how to improve the performance of these key institutions.

The data analysed for this report (statistics, perceptions, interviewees' experiences) suggest that although corruption at different levels has been widespread for years in the Republic of Moldova, measures to prioritize different types of corruption and adopt effective means to tackle them have been insufficient and, at best, poorly executed. This report recommends more clarity of responsibilities vis-a-vis mandates for investigating corruption based on the nature of the misconduct, in order to increase efficiency and achieve tangible results.

There is no unitary understanding and legal definition provided by national or international law on the distinctions between high-level, systemic or petty corruption. States distinguish between these notions mainly to define the mandate of anti-corruption institutions. After considering several relevant sources²³, the following definitions have been adopted for such terms in this report:

Table 1. Definitions of corruption

High-level (political or grand) corruption	(i) large in scale, (ii) takes place at the policy formulation end of politics, (iii) where policies and rules may be unjustly influenced involving top officials and political decision-makers, (iv) who exploit their positions (v) to extract bribes, tailor regulations or embezzle sums of money, (vi) often in great amounts (vii) to benefit their interests and (viii) causes serious and widespread harm to individuals and society. It often goes unpunished. Grand corruption is sometimes used synonymously with political corruption, referring to the corruption involved in financing political parties and political campaigns.
Systemic (endemic) corruption	(i) instances of corrupt conduct, (ii) which may or may not constitute serious corruption, (iii) occurs when a public or private organization (iv) establishes rules or norms of governance that permit or encourage corruption and (v) persists because corruption is a collective action problem, and (vi) individuals gain little from abstaining from or resisting corruption, (vii) if they cannot trust that others will do the same. This implies that current anti-corruption strategies are in need of some serious rethinking.
Petty (bureaucratic, or administrative) corruption	(i) everyday abuse which (ii) takes place at the implementation end of public policies, (iii) typically involving low-level public servants, or managers (iv) who abuse the entrusted limited authority of their positions (v) during their interactions with ordinary citizens (vi) mainly for personal gain, (vii) in exchange of favours or small sums of money, (viii) causing damage that might be significant in social terms.

Thus "high-level corruption" would fall within the mandate of APO when such crimes are committed by particular categories of subjects (as elaborated below), or where the monetary value of both ill-gotten benefits and significant damage caused through the criminal behaviour has exceeded thresholds as established in Moldova's Criminal Procedure Code.

²² "The Offshore Republic" Review of factors leading to systemic fraud and money laundering in Moldova's banking, financial and insurance sectors, Independent Anti-Corruption Advisory Committee, July 2022, <https://ccia.md/wp-content/uploads/2022/07/CCIA-Raport-ENG.pdf>.

²³ *Collective Action and Systemic Corruption*, Heather Marquette, Caryn Peiffer, 2015, <https://baselgovernance.org/sites/default/files/2019-02/collectiveactionandsystemiccorruption.pdf>; Transparency International, <https://www.transparency.org/en/corruptionary/grand-corruption>; *Everyday opinions on grand and petty corruption: A Portuguese study*, Gabrielle Poeschl, Raquel Ribeiro, 2012, <https://www.fep.up.pt/RePEc/por/obegef/files/wp013.pdf>; UNESCO's International Institute for Educational Planning, <https://etico.iiep.unesco.org/en/grand-corruption>.

1. Anti-Corruption Prosecutor's Office (APO)

1.1. Functional mandate

In 2003, Parliament created a sub-division in the Moldovan Prosecutor General's Office (PGO) which specialized in fighting corruption crimes²⁴. From its creation, the specialized department had a specific mandate to investigate and prosecute law enforcement officers and investigators from the Centre for Combating Economic Crime and Corruption (CCECC), the predecessor of NAC, the MIA, Customs and the regular police forces. It also conducted the PGO's corruption investigations and prosecutions of civil servants, judges, prosecutors and other officials.²⁵ However, as early as 2008, the Prosecutorial Reform Index, an ABA ROLI assessment, indicated that there was little real effort to prosecute serious corruption. Although "...APO is charged with overseeing the CCECC, the prosecutors in this office refuse to investigate the CCECC or its prosecutors and investigators. In 2007, approximately 18 prosecutors resigned rather than investigate the CCECC because of a widely held belief that the CCECC is even more closely tied to the President than is the PGO²⁶." In the same vein, similar findings were mentioned in May 2022 in the OECD report on the Republic of Moldova from the last pilot evaluation²⁷ and in June 2022 in the European Commission Opinion on the Republic of Moldova's application for membership of the European Union²⁸.

In 2016, APO became a specialized prosecution office, regulated by the Criminal Procedure Code (CPC), the Criminal Code, the Law on the Prosecution Office, and the Law on Specialized Prosecution Offices. APO and the National Anti-corruption Centre (NAC, discussed below) (formerly the CCECC) are co-located. APO works closely with NAC on their criminal investigations and prosecutes these cases. Thus, APO's authority to conduct criminal investigations regarding some of the crimes was transferred from NAC to APO.

Today, APO has the following mandate:

- to conduct criminal investigations;
- to supervise NAC criminal investigations; and
- to represent the state's accusation when the case is judged in first instance, irrespective of the level of court that hears the case in first instance.

According to the CPC, APO's mandate covers 16 corruption and corruption-related crimes, specifically those committed by individuals in the following categories: persons holding public office; high-rank civil servants; criminal investigation officers; lawyers; bailiffs; leadership of commercial banks; leadership of state enterprises; high officials in the Supreme Security Council; the head of the General Command of the National Army; and generals or equivalent. For the same 16 corruption and corruption-related crimes, regardless of the position/status of the suspect, APO can prosecute cases where the amount of money, services, goods, or advantages exceeds MDL 250,000 / EUR 12,820; or the value of the damage exceeds MDL 2,500,000 / EUR 128,200; or the value of the financing, donations, allocations from state budget from the electoral fund which has been misappropriated exceeds MDL 250,000/ EUR 12,820.

²⁴ Parliament Decision no. 1429/2002 of 7 November 2002 on the completion of Article 1 of the Parliament Decision no. 609 of 1 October 1999 on the creation of Prosecutor's Offices' bodies, their headquarters and activity jurisdictions, structure and staff.

²⁵ *Prosecutorial Reform Index for Moldova*, ABA ROLI, June 2008, old.lhr.md/rapoarte/justitie/aba/aba.roliprocuratura.2008.eng.pdf.

²⁶ *Ibid.*

²⁷ *Anti-Corruption Reforms in Moldova Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan*, OECD, 30 May 2022, https://www.oecd-ilibrary.org/governance/anti-corruption-reforms-in-moldova_9bb0367e-en.

²⁸ *Commission Opinion on the Republic of Moldova's application for membership of the European Union*, European Commission, 17 June 2022, <https://euneighbourseast.eu/wp-content/uploads/2022/06/republic-of-moldova-opinion-and-annex.pdf>.

Table 2. The activity of APO prosecutors

	Type of crime ²⁹	2017	2018	2019	2020	2021	2022 (9 months)
1.	Conducting criminal investigations	1,233	1,102	1,023	485	393	475
2.	Supervising criminal investigations carried out by NAC	2,003	1,980	1,869	1,575	1,326	1,027
3.	Representing accusations in court	270	292	264	208	197	386

Source: APO annual reports

According to an interviewee, the workload of APO prosecutors has not decreased due to legislative amendments or reduction of the number of committed crimes. It is due to an extraordinary decision in 2019 of the then leadership to assess the difficulty of cases and allocate the less complex ones to the territorial offices to allow anti-corruption prosecutors to focus on high-profile cases. While in this case it was necessary to send cases in order to diminish the high volume of cases, it is questionable if this is a desirable long-term strategy. The mandate should be clear to avoid specialised offices to cherry pick their cases.

The vast majority of investigated crimes are those of corruption, followed by embezzlement. Abuse of office and crimes against justice constituted a relatively important number of cases in 2017, then significantly decreased.³⁰

Table 3. Types of crimes investigated by APO prosecutors

	Type of crime	2017	2018	2019	2020	2021	2022 (9 months)
1.	Corruption (Articles 324, 325, 326, 333, 334 CC)	189	168	143	59	86	116
2.	Abuse of power or office (Articles 327, 335 CC)	170	148	98	63	60	85
3.	Excess of power or exceeding office mandate (Article 328 CC)	86	39	67	33	24	32
4.	Negligence (Article 329 CC)	12	6	3	11	3	7
5.	Crimes against justice (Articles 303-323 CC)	28	29	46	17	15	18
6.	Illegal circulation of narcotics and psychotropics (Articles 217-219 CC)	2	1	1	0	0	1
7.	Crimes against property (Articles 186-191 CC)	69	47	40	16	15	48
8.	Financial-banking crimes (Articles 238-240, 251-253 CC)	5	6	2	3	0	2

²⁹ According to the Law no. 3 on Prosecution Service of 25 February 2016, the APO prosecutors perform two functions: conduct the criminal investigation in the cases given in their mandate, according to the procedural-criminal legislation (the 16 types) and supervise the criminal investigation in the cases investigated by the NAC.

³⁰ For example, in September 2016, sixteen judges and four bailiffs have been accused by Moldovan anti-corruption prosecutors of involvement in the “Laundromat” case. The authorities reacted only three years after the last rulings were issued. The judges and bailiffs were apprehended for 30 days. The PG requested the SCM to suspend the magistrates on charges of complicity in money laundering and later they were accused of deliberate pronouncement of an unlawful decision. In September 2020, the anti-corruption prosecutors ceased criminal investigation in respect of thirteen former and current judges involved in the “Laundromat” because the deed did not have the requisite elements of the crime. In one of these motions, the prosecutor justified her decision in respect of a judge by the fact that his ruling “became final because it was not challenged, therefore, so far there is no confirmation of the fact that the court ruling is against the law”. Similar arguments are found in the motions issued by other prosecutors. Five judges asked the SCM to be reinstated to their previous positions. The judges had been suspended during the criminal investigation procedures. With the end of the criminal investigation, there were no other grounds to keep them suspended. Thus, after a four-year break, five judges, all investigated in the Russian Laundromat, have been returned to their positions. At least three of the five have asked to be paid pecuniary damages, moral damages and salary for the period they had been suspended.

9.	Fiscal evasions and ML (Articles 241-244, 250 CC)	23	24	24	7	9	29
10.	Smuggling (Articles 248, 249 CC)	0	1	1	0	0	2
11.	Others	58	49	100	31	58	135
	TOTAL	642	518	525	240	270	475

Source: APO annual reports

According to Article 270¹ of the CPC, APO carries out criminal investigation in respect of 16 crimes of the Criminal Code (181¹- 181³, 242¹, 242², 324–329, 332–335 and for crimes stipulated in Article 190 and 191 committed by using office). From the annual reports above, beyond the stipulated crimes, APO also conducted criminal investigation in respect of at least 41 additional crimes which are not within the mandate of APO, such as crimes against justice (e.g. illegal detention or arrest, coercion to testify, falsification of evidence); crimes regarding illegal circulation of narcotics and psychotropics; crimes against property; in finance and banking; tax evasion and ML; and smuggling, among others. All in all, there were 97 such cases (regarding the additional 41 crimes outside the APO mandate) in 2021, representing almost one-third of the total number of crimes prosecuted by APO. A similar situation occurred in previous years. While some of the crimes might have been investigated by APO in connection with corruption, others were simply assigned to APO at the sole discretion of the Prosecutor General.

During the past five years, the greatest number of cases were sent to court in 2017; afterwards, the numbers fell. From 2018 onwards, there were no indictments of NAC criminal investigation officers. Similarly, in 2020 there were none of judges, or bailiffs.

Table 4. Indicted subjects of corruption crimes by APO

	2017	2018	2019	2020	2021	2022 (9 months)
Judges	19	5	5	0	1	2
Prosecutors	4	3	4	2	4	6
Bailiffs	4	4	1	0	2	1
Lawyers	15	10	8	4	3	1
Criminal investigation officers MIA	6	4	1	2	1	0
Criminal investigation officers NAC	1	0	0	0	0	0

Source: APO annual reports

In the first nine months of 2022, there were two judges, six prosecutors, one bailiff and one lawyer indicted.

Since 2019, together with NAC, APO has been conducting a major criminal investigation into the Bank Fraud case, including the fraudulent activity of Banca de Economii, Banca Sociala and Unibank. Forty-five other cases were merged into it, encompassing such crimes as fraud, tax evasion, money laundering, violations of credit rules, etc.

Neighbouring Romania has dealt effectively with high-level corruption with many of the same problems and arrived at solutions, some of which may hold promise for the Republic of Moldova. Cases of high-level corruption are within the authority of the prosecutors of the National Anti-corruption Directorate (DNA). Currently, the mandate of DNA depends on several criteria: the status of the person, the value of the object of the corruption offence, e.g., the bribe (more than EUR 10,000), the amount of material damage caused by the crime (over EUR 200,000, or one million euro in the case of the offences provided by Articles 246, 297 and 300 of the Criminal Code). The Romanian legislation has experienced important fluctuations as to the mandate of DNA in an attempt to strike a fair balance between the need to effectively combat

grand corruption and the need to apply its mandate optimally. The above-mentioned thresholds have often been raised, and some crimes have been eliminated, so that only grand corruption cases are covered by DNA. Elements of the Romanian model, which have proved to be functional, might also be applied in the Moldovan context.

1.2. Performance

Workload

Before 2016, 38 prosecutors in APO were handling around 100 cases. Within half a year, the number of cases increased to 600, with the number of prosecutor posts rising in the staffing table from 38 to 50. APO has never achieved its full complement of 50 prosecutors and, in any case, the staff increase was not proportionate to the workload. These factors resulted in a backlog of more than 520 cases. Prosecutors tended to focus more on petty corruption, to meet their numbers and “look good” in quantitative terms.

APO prosecutors conducted criminal investigations in 1,233 cases in 2017, falling to 393 cases in 2021. Similarly, they supervised criminal investigations in 2,003 cases in 2017, dropping to 1,326 in 2021. Although the workload for both conducting and supervising criminal investigation has decreased, it is still very high, as shown in the table below.

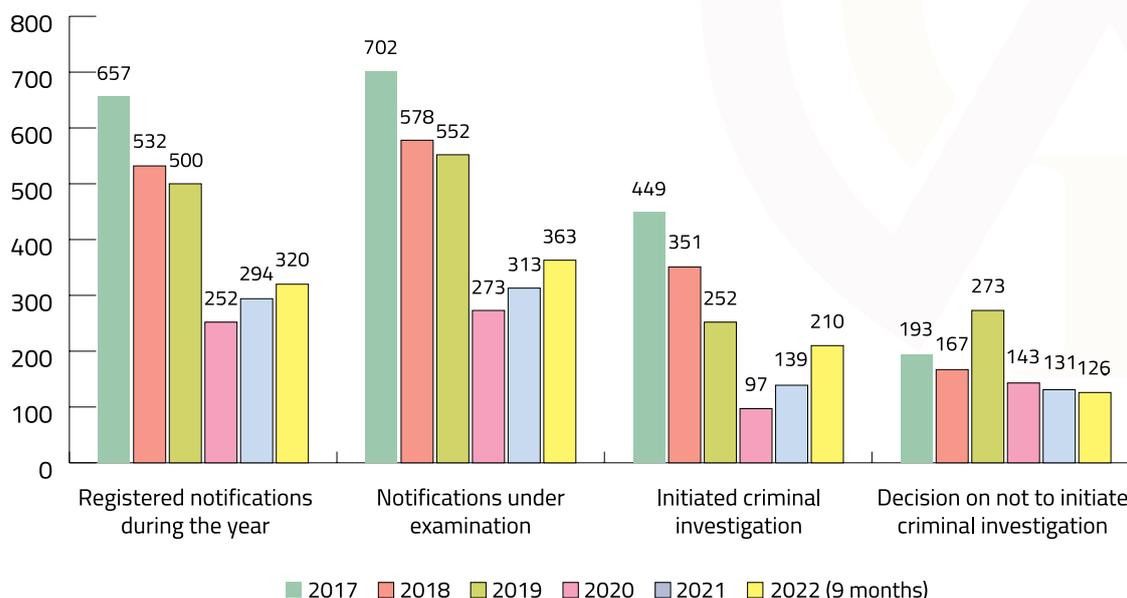
Table 5. The workload of APO prosecutors

	Conducting criminal investigation					
	2017	2018	2019	2020	2021	2022 (9 months)
No. of cases	1,233	1,102	1,023	485	393	475
No. of prosecutors	N/A	N/A	N/A	19	17	15
Workload per prosecutor	N/A	N/A	N/A	25	23	31
	Supervising criminal investigation carried out by NAC					
No. of cases	2,003	1,980	1,869	1,575	1,326	1,027
No. of prosecutors	N/A	N/A	N/A	13	11	12
Workload per prosecutor	N/A	N/A	N/A	121	120	85
	Representing the accusation in court					
No. of cases	270	292	264	208	197	386
No. of prosecutors	10	10	10	10	10	10
Workload per prosecutor	27	29	26	20	19	38

Source: APO annual reports

The data over the last five years regarding notifications of potential wrongdoing received by APO on cases in which it conducts the criminal investigation, indicates that the workload has steadily decreased between 2019-2020 (probably also due to Covid-19 related reasons), and started to slowly increase in 2021.

Figure 1. Notifications registered and examined by APO, initiated criminal investigations and decisions not to initiate criminal investigation



Source: APO annual reports

In the 9 months of 2022, the number of notifications were 320, under examination – 363, criminal investigations – 210 and 126 decisions not to initiate criminal investigation.

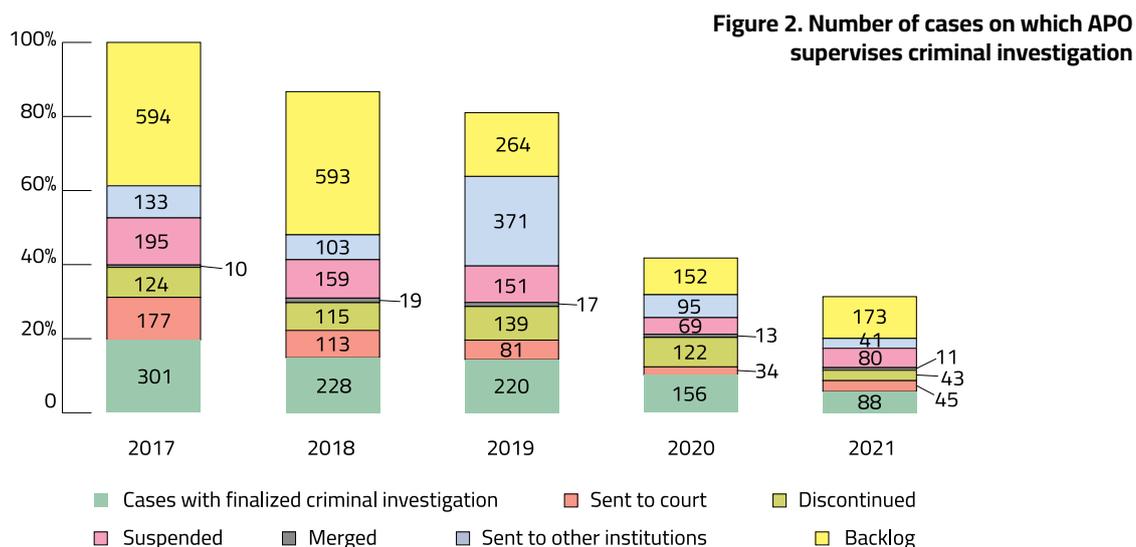
The backlog, extremely high in 2017, diminished by 2020, but increased slightly in 2021. In 2019, this was due to the distribution of petty corruption cases to the territorial prosecutors and change of leadership in PG and APO. However, the backlog is still very high.

Table 6. Backlog of cases in APO

Backlog	2017	2018	2019	2020	2021	2022 (9 months)
Conducting criminal investigation	594	593	264	152	173	248
Supervising criminal investigation	888	753	587	396	414	427

Source: APO annual reports

The total number of cases in which APO supervises the criminal investigation decreased steadily during the last years. This has generated a decrease both in cases sent to court and discontinued. On the other hand, the percentage of cases sent to court of the total number of cases increased by 32%, from 34 in 2020 to 45 in 2021.



Source: APO annual reports

As to the core activity of APO, investigation, supervision of criminal investigations and representing accusations in court, the data in the table below indicate that around half the finalized case files are sent to court, with an exception in 2020, when the number was considerably lower. However, the trend has increased in 2021.

The following tables show APO's cases sent to court:

Table 7. APO's cases and persons sent to court

Reporting period	2017		2018		2019		2020		2021		2022 (9 months)	
Criminal cases/persons decided with a sentence:	270	327	292	357	264	324	208	243	197	249	130	163
1. Conviction (cases/persons)	179	219	219	258	237	277	195	229	122	138	92	103
2. Discontinuation (cases/persons)	28	37	33	42	40	53	50	64	44	51	12	24
3. Acquittals (cases/persons)	21	31	18	27	15	27	19	31	31	60	25	35

Source: APO annual reports

Sixteen persons received convictions with imprisonment in 2021 out of the total of 138, while in 2020 there were 13 out of 229 persons. The total amount of fines in 2021 was more than MDL 8 million / EUR 410,250, while in 2020, fines were more than MDL 6 million / EUR 307,700.

Cases in court are presented by other prosecutors than those exercising or conducting the criminal investigation. APO cases that reach the appellate stage are represented by the specialised prosecutorial office for the appellate courts and the cases that reach the cassation stage by the PGO.

Staff

According to its organization chart, APO should have a staff of 130 persons, which includes 50 prosecutors (one chief prosecutor, six deputies, 43 prosecutors), 15 criminal investigation officers and 15 investigative officers delegated from NAC, 32 consultants³¹, 12 specialists³² and 6 technical staff.

³¹ According to Art. 54¹ of the CPC, during the criminal proceedings, the prosecutor can be assisted by a consultant who, upon the prosecutor's indication develops draft procedural documents and assists the prosecutor in carrying out procedural activities.

³² According to Art. 6, point 43) of the CPC, a specialist is a person who knows well a discipline or a certain problem and is involved in the criminal proceedings, as provided by law, to contribute to establishing the truth.

Under the Law on Prosecution Office, the selection of prosecutors is made competitively, in order to ensure an objective, impartial and transparent procedure. Candidates who meet the requirements submit their applications to the SCP. If found fit by the Board for Selection and Career of Prosecutors of the SCP, they are rostered in the registry of candidates to fill vacancy lists kept by the SCP. The above Board assesses the candidates based on criteria provided by law and by the SCP's own regulations. The Board proposes candidates to the PG, who makes the formal appointment to the APO. The PG can refuse the candidate and present grounds for the refusal. In case of refusal, the SCP can overrule the PG by a vote of two-thirds of its members.

The chief prosecutor of APO plays no role in this process, so has no power to select her/his team. A recent amendment to the Law on Prosecution Office allows the head of APO to select and propose the appointment of her/his deputies to the Prosecutor General without competition but with the SCP's written consent.³³ Additional legal amendments are necessary to empower the APO chief to select prosecutors from the registry of candidates kept by the SCP Board and propose their appointment to the PG.

Table 8. The staff in APO

Category of staff (according to the staffing table and de facto employed)	2017		2018		2019		2020		2021		2022 (9 months)	
Total number of prosecutors	50	44	50	44	50	44	50	43	50	43	50	41
Criminal investigation officers	15	N/A	15	N/A	15	N/A	15	8	15	8	15	9
Criminal investigators	15	N/A	15	N/A	15	N/A	15	8	15	9	15	8
Consultants	43	N/A	32	N/A	32	N/A	32	29	32	26	32	22
Specialists	10	N/A	12	N/A	12	N/A	12	8	12	8	12	5

Source: APO annual reports

As mentioned earlier, although the staffing table includes fifty positions of anti-corruption prosecutors, APO has never filled all positions, and has operated with several vacancies for some years. In 2021, for example, there were seven vacancies, while as of September 2022 – nine vacancies.

At the moment there is no uniform distribution of cases per prosecutor. The current range is between ten and twenty cases, while a normal workload would be five to seven cases, according to prosecutors interviewed for this report. If the 50 positions of prosecutors were filled, with the sufficient number of investigative officers and criminal investigation officers (two of each per prosecutor), an adequate number of specialists and technical staff, together with a system ensuring that the APO dealt only with high level corruption, the chances of better outcomes in such cases would be likely.

The higher number of notifications examined per year also includes the backlog; however, the operational trend, irrespective of the total number registered with APO, remains the same. Thus, an increase in the number of prosecutors is not deemed necessary. A body of 50 (as per the current staffing table) capable, well-trained, professional and pro-active anti-corruption prosecutors, assisted by a sufficient number of consultants, criminal investigation officers, criminal investigators and specialists would be sufficient.

The number of criminal investigation officer and investigator posts is thirty in total, but there are only seventeen such persons working at APO. This is grossly insufficient. Some interlocutors noted that prosecutors literally have to beg investigators to join their investigations. As of 2021, one criminal

³³ Law no. 280 on amending the Law on Prosecution Office of 6 October 2022, https://www.legis.md/cautare/getResults?doc_id=133641&lang=ro.

investigator and one criminal investigation officer works with four to five prosecutors, when in fact at least two of each would be required to support a single prosecutor.

Under Article 54¹ of the CPC, the prosecutor may be assisted by a consultant who, upon the prosecutor's order, prepares drafts of procedural documents and provides assistance to the prosecutor when carrying out procedural actions. There is approximately one consultant per two prosecutors. As to the number of specialists, APO has voiced repeatedly the need for specialised professionals in areas related to the most complicated and high-profile cases – banking, finance, insurance, etc. As to translators and interpreters, APO has also made repeated requests to the PGO for such services.

During 2012-2016, APO was regrettably drawn into a series of cases such as violations of the controversial Article 307 of the Criminal Code³⁴, discussed below. Such cases are not within the APO mandate, and were time consuming, producing undue workload, and diverted resources from fighting high-level corruption.

1.3. Main challenges

Mandate

Following the above and other assessments, including a comparative analysis of other jurisdictions it is evident that APO should focus only on high-level corruption.

Independence of the APO within the Prosecution Service

The laws on the specialized prosecution offices entered into force in 2016. The law provided for specialized prosecution offices, including the APO, to have operational and functional independence. However, that law has been consistently violated in spirit and perhaps also by the letter. APO has no operational independence; it depends on the PGO for items large and small, from hiring staff to procurement of office supplies. The PG assigns to or removes from the APO cases at his/her sole discretion, and the APO has been subjected to serious PGO interference.

An example of the vulnerability resulting from this de facto lack of independence of the APO emerged in 2019³⁵, when PG Alexandr Stoianoglo ordered a complex examination of the activity of APO and PCOCSC aimed at verifying and evaluating their activity for the period 2016 – 2019. During this control, the chief of APO was removed from APO and delegated to the GPO for nine months, while the head of PCOCSC remained in his position. Therefore, no functional guarantees were ensured for the position of APO head.

Shortly after taking over his function, the PG Stoianoglo³⁶ ordered two groups of specially appointed prosecutors to carry out a complex examination of the activity of APO and PCOCSC aimed at verifying and evaluating their activity for the period 2016 – 2019. Starting the next day, the Chief Prosecutor of the APO, Viorel Morari, was delegated to the PGO for a period of one month.

On 26 December 2019, the PG³⁷, on the basis of two notifications, initiated a criminal investigation on grounds of abuse of office and forgery of public documents against Viorel Morari and assigned the case to a group of prosecutors and criminal investigation officers under the leadership of a PGO prosecutor. On 10 January 2020, Viorel Morari was acknowledged as suspected of criminal behaviour for having received a complaint from Vladimir Plahotniuc that he allegedly registered contrary to legal requirements, started a criminal investigation and later falsified several procedural documents, to protect him [Plahotniuc] from involvement as a suspect in the Bank Fraud case and to obstruct the investigation. Morari was arrested and held for 72 hours, then further placed in pre-trial detention and subsequently released on 14 February.

³⁴ Article 307 of the Moldovan Criminal Code on “wilfully rendering a judgement, sentence, decision or ruling in breach of the law” is seen as a mechanism which endangers judicial independence. “Only an Empty Shell” the Undelivered Promise of an Independent Judiciary in Moldova, A Mission Report, International Commission of Jurists, 2019, www.icj.org/wp-content/uploads/2019/03/Moldova-Only-an-empty-shell-Publications-Reports-Mission-reports-2019-ENG.pdf.

³⁵ *Anti-Corruption Reforms in Moldova: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan*, OECD, 2022, https://www.oecd-ilibrary.org/governance/anti-corruption-reforms-in-moldova_9bb0367e-en.

³⁶ Press release, PGO, 9 December 2019, <http://procuratura.md/md/news/1211/1/8169/>.

³⁷ Press release, PGO, 26 December 2019, <http://procuratura.md/md/news/1211/1/8205/>.

Within a month from the initiation of the PGO's examination of APO case files, the PG announced the summary of the results³⁸ : the specialized prosecutor's office is used to document minor cases, in order to create favourable statistical indicators, contrary to the expectations of society, and as a consequence, fails to pursue high level corruption. High profile cases remain idle or gather dust in safes, having no finality over the years; there is lack of reasonable suspicion in initiating cases; a special attention was dedicated to the bank fraud and financing of the Socialist party cases.

On 23 January 2020, at the request of the PG, the SCP³⁹ suspended Viorel Morari from his position of chief prosecutor of APO.

In May 2020⁴⁰ , PCOCSC carried out criminal investigation actions within the premises of the APO and NAC, on deeds of evidence falsification, the compulsion to make statements by the person who detects the crime, the criminal investigation officer, prosecutor and on events from 2017-2018. Subsequently, computers and electronic media carrying information were seized.

In January 2021, the PGO issued a statement affirming that the PG firmly rejects any discredit related to him and his family, precisely that his wife had no affiliation with Ukrainian companies (allegedly related to Veaceslav Platon) and that the discredit is being done by Morari as revenge for the case initiated against him.⁴¹ The following days, after having been summoned for indictment, Viorel Morari was apprehended⁴², charged with excess of power, forgery in public documents, illegal detention or arrest and knowingly holding liable an innocent person. All these had been allegedly committed with regard to the co-owners of a gas station network, and he would have acted in co-participation with a subordinate prosecutor, policemen and others. The next day Morari was brought to court where the investigative judge rejected the prosecutors' request to apply pre-trial detention.⁴³ According to Morari, the entire process was a vendetta of the PG. Several days later, PCOCSC challenged the court's ruling by which Morari was set free. According to the press release of the PGO⁴⁴, this was due to a conflict of interest between the investigative judge and Morari. The PGO confirmed that three years before, under the leadership of Viorel Morari, APO ordered the discontinuation of criminal investigation against that judge (judge who extended the arrest warrant for an individual who had been prosecuted, detained, arrested, deprived of wealth and illegally held criminally liable in a fabricated case). In July 2021, Morari was presented with the list of evidence.⁴⁵

On 13 August 2021, the PG dismissed Viorel Morari from the position of chief prosecutor in APO. The decision came as a result of his failure to respond to an option to occupy another position of prosecutor after the expiration of his mandate.⁴⁶

In September 2021, Alexandr Stoianoglo⁴⁷ stated that Viorel Morari was a person trusted by Vladimir Plahotniuc and that there are groups of prosecutors who served political actors. According to the PG, the criminal investigation has been finished in respect of Morari, however, the file could not be sent to court since Morari is slowing down the processes.

The situation above shows how much influence a PG can exert on a chief prosecutor of a specialised prosecutor's office and how he/she can interfere in the functioning of the institution. This fierce conflict between the top officials in the Prosecution Service generated a blockage in the activity of APO. It also negatively impacts APO prosecutors and their commitment to investigating corruption cases, and thus the overall effectiveness of the agency.

³⁸ Press release, PGO, 20 January 2020, <http://procuratura.md/md/newslist/1211/1/8211/>.

³⁹ Press release, PGO, 20 January 2020, <http://procuratura.md/md/newslist/1211/1/8211/>.

⁴⁰ Press release, PGO, 22 May 2020, <http://procuratura.md/md/newslist/1211/1/8329/>.

⁴¹ Right to replica, PGO, 6 January 2021, <http://procuratura.md/md/newslist/1211/1/8492/>.

⁴² Press release, PGO, 19 January 2021, <http://procuratura.md/md/newslist/1211/1/8496/>.

⁴³ Viorel Morari was released. The judge rejected the prosecutors' request to place him in custody, Newsmaker, 20 January 2021, newsmaker.md/ro/viorel-morari-a-fost-eliberat-judecatorul-a-respins-demersul-procurorilor-privind-plasarea-acestui-in-arest/.

⁴⁴ Press release, PGO, 25 January 2021, <http://procuratura.md/md/newslist/1211/1/8498/>.

⁴⁵ Press release, PGO, 13 July 2021, <http://procuratura.md/md/newslist/1211/1/8629/>.

⁴⁶ Press release, PGO, 13 August 2021, <http://procuratura.md/md/newslist/1211/1/8658/>.

⁴⁷ Stoianoglo: Morari and Bețșor erau oamenii de incredere ai lui Plahotniuc/, <https://realitatea.md/stoianoglo-morari-si-betisor-erau-oamenii-de-incredere-ai-lui-plahotniuc/>.

In recent years, the PGO has directed APO to prosecute judges under Article 307 of the Criminal Code for issuing a sentence, decision or ruling contrary to the law. To prosecute such a crime is not within the mandate of APO. This is again an illustration of the fact how the PGO allocates cases to APO, only under exceptional circumstances and with written, legally reasoned orders⁴⁸.

The Venice Commission⁴⁹ mentioned that judges can be held criminally liable only for interpreting a law with ill-intent or serious negligence. The same rationale has been adopted by the Constitutional Court.⁵⁰ Potential abuses committed by judges are already criminalized and can be prosecuted under Article 324 (passive corruption), Article 328 (excesses of office), Article 327 (abuse of power), Article 326 (influence peddling).

Mandate of the chief prosecutor of the APO

The chief prosecutor of the APO must have more authority in the selection and career management of APO prosecutors. For example, the appointment of prosecutors to APO could be carried out through an interview⁵¹, conducted by a special commission created within APO, based on the request of the chief prosecutor of APO, addressed to the SCP. Furthermore, the term of an APO prosecutor should be up to five years, renewable based on performance. Thus, the role and power of the chief prosecutor of the APO will increase given her/his authority to select the APO team. Currently, the employment is done based on a competition, with evaluations carried out by the boards of the SCP, the interview at the SCP and later appointment by order of the PG.

Representation in court

Currently, of the thirty-nine prosecutors working in APO, ten take cases to court. The prosecutors that conduct or supervise criminal investigation do not represent the case in court. This is an unproductive and inefficient practice, as the prosecutor who has worked on a specific case and knows every detail has to pass large numbers of files to a colleague who has not been part of the investigative team and as such has not heard witnesses nor has conducted any of the underlying criminal investigation. The representing prosecutor has to invest significant time to become familiar with details of the case. This also may mean that the prosecutor focused on criminal investigation is also less focused on end results during criminal investigation but rather on sending the case to his colleague who will represent the claim in court. Moreover, this practice also increases the probability that the second prosecutor (specialised on presenting the cases in court) misses important details from criminal investigation stage.

In addition, APO cases that are appealed to the Court of Appeals and cassation before the SCJ are represented in these courts by prosecutors from the prosecution offices specialized in representations before these courts. This practice has a serious negative impact on the effectiveness of representation, such as additional time to study case materials, lack of corruption specialization and high probability to miss important details of the case.

Staff

Until now, there has been no clear understanding of the number of staff needed for a well-functioning APO based on the number of cases (considering either the current wide mandate or limited to high-level corruption). There has been no strategic analysis or planning, based on indicators, baselines or a results-based framework. The majority of the interviewees stated that a solid corpus of 50 anti-corruption prosecutors would be sufficient, provided that there are sufficient support staff, and the mandate of APO is narrowed to high-level corruption.

⁴⁸ Reference can be made here to the case of the former Court of Appeals judge, current Constitutional Court Chairperson, Domnica Manole. More details at page 4, newsletter, Legal Resources Centre of Moldova, April-June 2016, <http://crjm.org/wp-content/uploads/2016/09/CRJM-Newsletter-nr-10-ENG.pdf>.

⁴⁹ *Amicus Curiae* brief for the Constitutional Court on the criminal liability of judges no. CDL-AD(2017)002 of 13 March 2017, https://www.constcourt.md/public/files/file/comisia_venetia/CDL-AD2017002-e.pdf.

⁵⁰ Decision no. 59 of the Constitutional Court on the inadmissibility of the notification no. 72g/2017 of 27 June 2017, <https://constcourt.md/ccdocview.php?tip=decizii&docid=356&l=ro>.

⁵¹ Interview to check the professionalism, capacity to take decisions and to assume accountability, stress resistance and other specific capacities.

Also, while the law guarantees independence of specialized prosecution offices, the fact that they do not have distinct legal status means in practice that the PG has a central role in all decisions regarding the preparation and use of their budget and control over human resources. As discussed above, this situation has led to interference of the PG in the work of such offices.

Prosecutorial staff retention/employment

At present APO has eight investigative officers, nine criminal investigation officers, while 13 positions are vacant. These numbers are clearly insufficient for the number of cases. The investigative officers and criminal investigation officers are appointed to APO via the secondment mechanism, which makes APO dependent on the will of the head of the institution that secondes the officers. The secondment raises issues of dependency of good will of the head of the body from which the officers are seconded and of the staffing situation. Moreover, the mandate of these officers can be withdrawn at any moment. The APO chief cannot employ such officers by him/herself.

The lack of specialists in finance and banking has been a central problem for APO in investigating the Bank Fraud and the Russian Laundromat. Most support came from CARA, which carried out analysis and financial investigations⁵². Within the National Centre for Legal Expertise and NAC there are accountants and other experts, but their number is insufficient, and it may take up to 4-5 years for a forensic report to be finalised, according to interlocutors interviewed. It often occurs that such reports are finalized after expiry of the statute of limitation. Their workload is very high, and unlikely to decrease.

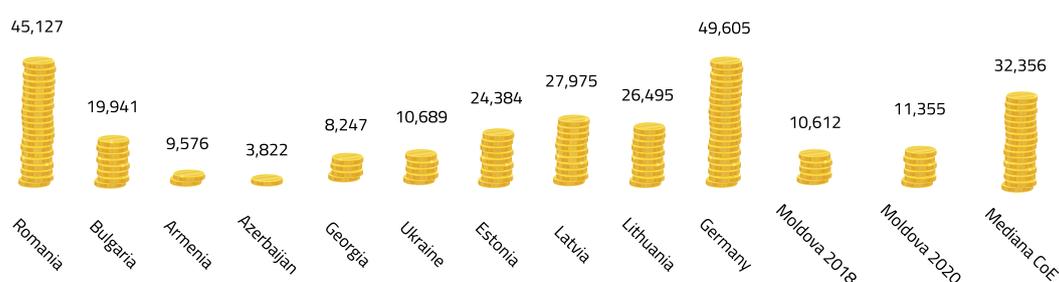
Lack of translators and interpreters is another important issue. Since APO has no separate budget, PGO concludes annual contracts with translation/interpretation offices. APO has to provide specific requests for such services (which are not always predictable since they depend on the volume of information received from foreign peer institutions). The entire process is time consuming. Full-time positions and/or long-term outsourcing of interpreters of English, Russian and French are needed.

Remuneration

Since 2018, the manner of calculation of salaries in the budgetary system has changed by adopting the Law on the Unitary Remuneration in the Budgetary System and increases have been frozen.

Prosecutors are poorly paid. According to Legal Resources Centre from Moldova (LCRM)⁵³, the gross salary of entry level prosecutors in the Republic of Moldova is one third lower than the Council of Europe median.

Figure 3. The gross yearly salary of beginner prosecutors in Europe (in EUR)



Source: Legal Resources Centre from Moldova

⁵² The notion of “parallel financial investigation” (Article 6 point 20¹ CPC) is different from the concept of “financial investigations” provided in Article 3 of the Law No. 308 of 12 December 2017 - activities consisting in data collection, analysis and verification of all financial and economic relations, as well as checking customers who may be linked to the actions of money laundering, offenses associated with them and providing financing for terrorist activities related to the identification, setting source and tracking assets that derived from such offenses, the terrorist funds and other assets that are or may be the subject of precautionary measures and/or seizure and investigation activities of criminal network size and the degree of criminality involved. The financial investigations are distinct from the special investigations regulated by the Law No. 59/2012 on special investigation activity. *Guidelines on Conducting Parallel Financial Investigations*, General Prosecutor’s Office of Moldova, 9 April 2019, moldova.iom.int/sites/g/files/tmzbd1626/files/documents/Finanacial_Investigations_guide_en_FINAL.pdf.

⁵³ *Salaries of judges and prosecutors*, Legal Resources Centre from Moldova, 20 October 2021, <https://crjm.org/2021/10/20/justitia-din-republica-moldova-salariile-judecatorilor-si-procurorilor/>.

A challenge regarding the salaries of judges and prosecutors was raised at the Constitutional Court. The claim referred to the way in which the calculation was made for these salaries - within the limits of the allocations provided in the national public budget and the reduction of wages following the adoption of the Law on the Unitary Remuneration in the Budgetary System⁵⁴. Beforehand, the Constitutional Court declared unconstitutional the following provision "the official salaries of judges and prosecutors are reviewed annually from April 1, within the limits of the allocations provided for this purpose in the national public budget"⁵⁵. The Court noted that under these conditions the amount of a judge's salary becomes uncertain, left at the discretion of the decision-makers in the legislature, a fact that can affect the independence of the judiciary. As a result of this judgment, the method of salary recalculation in respect of judges became unconstitutional. For prosecutors, however, it remained constitutional. This meant in practice that the prosecutors' salaries have not increased since 2018, when the wages were established based on Law no. 270 which changed the mechanism of wages calculation (no longer dependent on the medium wage in the overall economy) and established yearly by the Law on the State Budget.

On 8 February 2022, the interim Prosecutor General submitted an application⁵⁶ to the Constitutional Court challenging the Law on the Unitary Remuneration in the Budgetary System. He substantiated his reasoning bringing in international best practices on adequate remuneration of prosecutors, proportional to the importance of their work and the need to ensure their independence also by means of proper remuneration. The PG also indicated that in 2016, the Parliament provided that the salary of prosecutors would be calculated based on the same principles as that of judges (depending on the average salary in the economy in the previous year), an objective parameter that would vary depending on the economic situation in the country. This rationale derived from the need to ensure a transparent, fair and attractive salary able to remunerate professionals sufficiently. The Law on the Unitary Remuneration in the Budgetary System of 2018 set a fixed parameter established by the Government.

Till the present, however, this remains in the hands of politicians, which can affect prosecutorial independence. For 2022, a prosecutor in the territorial prosecution offices with six years of experience would receive a gross monthly salary of MDL 18,225 / EUR 930. Under the previous law, this amount would have increased to MDL 26,730 / EUR 1,370. The case is pending in the Constitutional Court.

In order to be functional, prosecutors should enjoy subsidized housing for those working in localities other than their normal residence for the duration of their work. Judges are provided with such benefits. The prosecutors and their families should also enjoy medical insurance free of charge⁵⁷, similar to judges⁵⁸. Neither judges nor prosecutors are allocated with appropriate transportation allowances to travel to work assignments in localities away from their residences.

Budget administration

The Law on the Prosecution Office provides that the budget of the specialized prosecution office (including APO), is to be separately reflected in the budget of the Prosecution and to be administered by the chief prosecutor of the specialized prosecution office. However, as mentioned above, the APO does not have its

⁵⁴ Law no. 270 on the Unitary Remuneration in the Budgetary System of 23 November 2018, https://www.legis.md/cautare/getResults?doc_id=133551&lang=ro#.

⁵⁵ Constitutional Court Decision no. 15 of 2 May 2017 - constcourt.md/ccdocview.php?l=ro&tip=hotariri&docid=616. On 22 May 2017, in its Decision no. 42, it declared inadmissible the notification submitted by the PG who challenged the constitutionality of the same article which referred to the review of the salaries of judges and prosecutors within the limits of the allocations provided for this purpose in the national public budget. The PG alleged that the legal provision is not sufficiently clear, fluent and intelligible. The Court rejected the notification as being repetitive and referred to the above decision - constcourt.md/ccdocview.php?l=ro&tip=decizii&docid=330.

⁵⁶ Application no. 18a of 8 February 2022 on the constitutionality control of Article 30 para. (4) of the Law on the Unitary Remuneration in the Budgetary System no. 270 of 23 November 2018, constcourt.md/ccdocview.php?tip=sesizari&docid=1951&l=ro.

⁵⁷ Article 62 para. (1) of the Law no. 3. on Prosecution Service.

⁵⁸ Article 31 of the Law no. 544 on the status of judge of 20 July 1995, https://www.legis.md/cautare/getResults?doc_id=16243&lang=ro.

own legal standing, so is not a budget holder under the law and there are no staff allocated for financial matters. Thus, the chief of APO cannot independently dispose of its budget and cannot fulfil the logistical needs of the institution. Even the acquisition of office supplies must be requested and approved by the PGO.

Special investigative measures, including surveillance measures such as wiretapping and physical observation

As to the current provision of the Criminal Procedure legislation, the prosecutor is not included among the subjects entitled to carry out special investigation measures. According to the Law on special investigation activity⁵⁹, the only entities that are entitled to carry out special investigation activity are the MIA, Ministry of Defence, NAC, Security and Intelligence Service (SIS), Service for State Guard and Protection, Customs Service, State Tax Service and National Prison Administration.

The APO does not have a separate unit and resources (in both human capital and equipment) to carry out special investigative measures. For example, a specialized subdivision of the SIS is mandated to technically support court-ordered wiretapping⁶⁰ through special equipment administered at the central level, and also provides peripherals to agencies that do not have it. Wiretapping is carried out by investigative officers of specialized subdivisions of MIA, NAC, Customs, and seconded officers to PCOCSC. Although similar in status to APO, PCOCSC has a technical subdivision in charge of wiretapping, while APO does not.

APO is dependent on NAC in terms of human resources and technical equipment in carrying out special investigation measures. In view of improving the efficiency of the fight against high-level corruption, APO also needs and should have its own unit/department, including technical equipment and the human resources to operate it, for carrying out special investigative measures. An intelligence analysis department is also needed.

APO's special investigative measures unit is crucial to effectiveness of its criminal investigations. It would also reduce the potential leaks of information by limiting the number of persons and institutions involved in the process. Establishing such a unit would require changes to legal provisions, in order to enable APO itself to carry out such measures.

Inter-agency cooperation

APO works with criminal investigation officers and investigative officers detached from NAC. Over the years, cooperation has been erratic. Blame as to this failure in collaboration has passed from one institution to the other. (In an interview, the former chief of APO, Viorel Morari admitted having had tense relations with the NAC head, Bogdan Zumbreanu⁶¹). The relationship between APO and NAC mainly depends on the personal chemistry between the leadership of these institutions. NAC can exercise power and influence over APO, since NAC prepares cases for APO. For example, the head of NAC, Viorel Chetraru stated publicly that he had been aware of the Bank Fraud crimes as early as November 2013. He informed political leaders at the time, rather than immediately initiating criminal investigations.⁶²

There have been criticisms that NAC focuses on petty corruption cases and that APO may have temporized in its work in important files. For almost two decades, these two institutions have had only brief periods of good cooperation.

⁵⁹ Law on special investigation activity no.59 of 29 March 2012, https://www.legis.md/cautare/getResults?doc_id=123543&lang=ro.

⁶⁰ Articles 132⁷ - 132¹¹ of the Criminal Procedure Code no. 122, 14 March 2003, https://www.legis.md/cautare/getResults?doc_id=113967&lang=ro, Article 7 of the Law on Security and Intelligence Service no. 753 of 23 December 1999, https://www.legis.md/cautare/getResults?doc_id=121235&lang=ro. The manner of organizing and carrying out special investigative measures in electronic communications networks is foreseen by the Regulation on the manner of organizing and carrying out special measures of investigations in electronic communications networks, 15 September 2020, https://www.legis.md/cautare/getResults?doc_id=123656&lang=ro.

⁶¹ *Confessions of Viorel Morari*, Black Box Show, Tv8, <https://www.facebook.com/watch/?v=1269164699906441>

⁶² The Inquiry Committee on the Bank Fraud and Defrauding the Banking System of Moldova was established by the Decision of the Parliament no. 143 of 17 October 2019. The *Report of the Inquiry Committee on the Bank Fraud and Defrauding the Banking System of Moldova* is available at http://alegeri.md/w/Raportul_Comisiei_de_anchet%C4%83_privind_frauda_bancar-%C4%83_%C8%99i_devalizarea_sistemului_bancar_din_Republica_Moldova.

With respect to important high-level corruption cases (mainly with reference to the Bank Fraud and Laundromat events) some interviewees pointed also to poor cooperation, with the PGO and the other specialised prosecutor's office, POCOCS, especially with respect to exchange of information.

International cooperation

In the investigations of the Bank Fraud and Russian Laundromat there were a number of foreign jurisdictions which would not provide timely and sufficient information. Of late, the situation has improved. Until the beginning of 2022, the APO has drafted 88 mutual legal assistance requests. Of these, 37 have been fully executed, 14 have been partially executed and five have been refused and reformulated, while a final 32 have not been executed. Moldova has faced challenges getting meaningful responses from Russia (and, until recently, Switzerland). Since June 2021, Cyprus, Switzerland, and France have been more open to cooperation. More operationally, since 2020 the APO and the PGO of Latvia have been working effectively on a joint investigation team.⁶³ The most significant advantage in having joint investigation teams is the fast communication between institutions on particular aspects. Deriving from the positive results of this exercise, other joint investigation teams should be created with other countries,⁶⁴ including via specialized international organizations such as EUROJUST, with which the Republic of Moldova has concluded a cooperation agreement back in 2014⁶⁵. Some efforts have already been initiated in this respect.

Reporting

Annual reports of APO are not publicly available. Moreover, the information that is available is not always easily accessible and understandable to the wider public.

⁶³ The common joint investigation team with Latvia was created to exchange information and evidence in real time and has resulted in the identification of some beneficiaries of the bank fraud. In 2022, the group was enhanced with members covering anti-money laundering more broadly and is intended to be extended for one more year, with other countries invited to join.

⁶⁴ "The Offshore Republic" Review of factors leading to systemic fraud and money laundering in Moldova's banking, financial and insurance sectors, Independent Anti-Corruption Advisory Committee, July 2022, <https://ccia.md/wp-content/uploads/2022/07/CCIA-Raport-ENG.pdf>.

⁶⁵ See the Agreement on cooperation between Eurojust and Moldova, available at: www.eurojust.europa.eu/sites/default/files/InternationalAgreements/Eurojust-Republic-of-Moldova-2014-07-10-EN.pdf.

1.4. Recommendations

1. Parliament should provide APO with the mandate to conduct criminal investigations on the following (within 3 months):
 - a. Crimes provided by Criminal Code Articles 181¹- 181³, 239¹, 240, 243, 324–328, 330², 332–335, irrespective of the value of the bribe or damage committed by the subjects indicated in the Article 270¹ para. (1) p.1 of the CPC⁶⁶ (which includes high-ranking officials⁶⁷ and other special subjects). The list of subjects should be amended as follows:

- 1) To include leadership of political parties, managers of international funds and managers of public funds;

⁶⁶ Article 270¹ para. (1) p.1 of the CPC currently provides the following list of subjects in the competence of APO: *a)* high-ranking officials within the meaning of art. 123 para. (3) of the Criminal Code, except for mayors and deputy mayors of villages and communes, local counsellors of villages and communes; *b)* civil servants holding senior level management positions; *c)* criminal investigation officers and investigative 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.

⁶⁷ The Annex to Law No. 199 as of 16 July 2010 on the Status of Persons Holding Senior State Functions includes the following high-ranking positions:

<ul style="list-style-type: none"> - The President of the Republic of Moldova - The President of the Parliament - The Prime Minister - The Deputy President of the Parliament - First Deputy Prime Minister - Deputy Prime Minister - Chairperson of the Standing Committee of the Parliament - Vice-Chairperson of the Standing Committee of the Parliament - Chairperson of the parliamentary fraction - Member of the Standing Bureau of the Parliament - Secretary of the Standing Committee of the Parliament - Member of the Parliament - Minister - Governor (Bashkan) of the Autonomous Territorial Unit of Gagauzia - Chairperson of the People's Assembly of the Autonomous Territorial Unit of Gagauzia - Vice-chairperson of the People's Assembly of the Autonomous Territorial Unit of Gagauzia - Chairperson of the Standing Committee of the People's Assembly of the Autonomous Territorial Unit of Gagauzia - First Deputy Chairperson and Deputy Chairperson of the Executive Committee of the Autonomous Territorial Unit of Gagauzia - Mayor General of Chisinau, mayor, deputy mayor, pretor and deputy pretor - President, Vice-President of the District - Director General (Director) of the Central Administration Authority - President, Judge, Assistant Judge of the Constitutional Court - President, Member of the Superior Council of Magistracy with the main activity in the Council, Inspector-Judge of the Judicial Inspection - President, Vice-President, Judge of the Supreme Court of Justice - President, Vice-President, Judge of the Court of Appeal - President, Vice-President, Judge of the Court - Prosecutor General, First Deputy Prosecutor General, Deputy Prosecutor General, prosecutors of all levels - Ombudsman, Ombudsman for children's rights, Deputy Ombudsman 	<ul style="list-style-type: none"> - President, Vice-President, Member of the Court of Accounts - Director, Deputy Director of the Security and Intelligence Service - Director, Deputy Director of the National Anti-corruption Centre - Chairperson, Deputy chairperson, Secretary of the Central Electoral Commission - Chairperson, member of the Broadcasting Coordinating Council - Chairman, Deputy-Chairman, Member of the National Commission of Financial Market - President, Vice President of the National Integrity Authority - Chairperson of the Council for Prevention and Elimination of Discrimination and Assurance of Equality - Governor, First Deputy Governor, Deputy Governor of the National Bank of Moldova, Member of the Supervisory Board of the National Bank of Moldova - Director General, Director of the National Energy Regulatory Agency - Director, Deputy Director of the National Regulatory Agency for Electronic Communications and Information Technology - Director General, Deputy Director General, Advisor for claims settlement of the National Agency for Settlement of Claims - Chairman, Vice-Chairman, Member of the Competition Council Plenum - Director, Deputy Director of the State Protection and Guard Service - Director, Deputy Director of the National Centre for Protection of Personal Data - Director General of the National Food Safety Agency - Director General of the National Health Insurance Company - Director General Manager of the National Office of Social Insurance - Governmental Agent - representative of the Government of the Republic of Moldova to the European Court of Human Rights - Director, Deputy Director of the Office for Prevention and Fight against Money Laundering.
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2) "Persons representing the management of state enterprises and joint stock companies with the state's majority shares and persons representing the management of commercial banks" to be replaced with "Leadership, members of the council, executive body and censorship commission of state-owned enterprises, corporation with majority state capital and commercial banks";

3) To exclude bailiffs from the list.

- b.** Crimes provided by Criminal Code Articles 190 and 191 committed by the subjects above by using official position above a damage of EUR 20,000 / 7,720 conventional units⁶⁸.
- c.** Crimes committed in a) and b), regardless of the subject, if the amount of money, value of goods, services, privileges, advantages or any benefits requested, promised, accepted, offered, given or received exceeds EUR 20,000 / 7,720 conventional units.
- d.** Crimes provided by Criminal Code Articles 236 – 239², 242¹-242³, 250, 252-253, 329 regardless of the subject and above a damage of EUR 200,000 / 77,220 conventional units.

Parliament should amend APO's mandate to exclude supervision of criminal investigations conducted by NAC. The criminal investigations conducted by NAC shall be supervised by prosecutors from the territorial offices where NAC offices are located. (3 months)

- 2.** Parliament should amend the criminal procedure legislation to include the prosecutor among the subjects entitled to carry out special investigation measures. The criminal investigators and criminal investigation officers in APO should enjoy a similar status to those in NAC (3 months)
- 3.** Parliament should amend the relevant legislation to include the prosecution office among the authorities entitled to carry out special investigation measures. (3 months)
- 4.** Parliament should amend the Law on Specialized Prosecution Offices to allow the heads of the specialized prosecution offices to select their own teams of prosecutors. The appointment of prosecutors to APO is to be carried out through an interview, conducted by a special commission created within APO, based on the request of the chief prosecutor of APO, addressed to the SCP (3 months).
- 5.** Parliament should amend legal provisions to provide the chief prosecutor of specialized prosecution offices with the authority to employ specialists (banking, IT, finance and tax, auxiliary staff etc.), interpreters, translators, and others as needed. The APO chief is to be empowered to employ criminal investigation officers and investigative officers for a five-year renewable mandate. (3 months)
- 6.** Parliament should amend legislation to ensure that the PG carries out oversight of specialized prosecutors' offices only through the chief prosecutors of these institutions. The PG must not have any authority to remove case files from specialized prosecutors' offices or to assign them cases that are not within their mandate. Also, specialized prosecutors' offices must have a clear and exclusive mandate that would block arbitrary decisions as to which cases to keep and which to send to other prosecutors' offices. The criminal investigators and criminal investigation officers in APO should enjoy a similar status to those in NAC. (3 months)
- 7.** Parliament should provide APO with the necessary legal standing and status of secondary budget holder and provide sufficient staff to administer APO's budget. (3 months)

⁶⁸ One conventional unit constitutes MDL 50, monitorul.fisc.md/editorial/marimea-unitaii-conventionale-va-constitui-50-lei.html/.

- 8.** Parliament, PGO and APO should ensure that the budget and the staffing table of APO allow for the following to be included in APO:
 - a.** a department to carry out special investigation measures, including surveillance measures such as wiretapping and physical observation. For efficiency purposes, the currently existing resources in NAC should be divided between NAC and APO to ensure a prompt and effective implementation of this recommendation regarding APO. (3 months);
 - b.** an intelligence analysis department. Similar to the above, the existing resources in NAC should be divided between NAC and APO to ensure a prompt and effective implementation of this recommendation regarding APO. (3 months);
 - c.** departments on communications, human resources, finance and budget. (3 months).
- 9.** Parliament should amend legislation to provide adequate attractive remuneration for APO prosecutors and other staff and put in place proper incentives, including for those transferred or temporarily exercising their office duties outside their places of habitual residence for the period of exercising the mandate. (18 months)
- 10.** PGO and APO should ensure, as a rule, that the same prosecutor who conducted the criminal investigation of a case represents it throughout all court proceedings. (3 months)
- 11.** APO should carry out an assessment of its current state, looking at efficiencies in policies and practices, streamlining, capacity gaps and other needs. This should inform and result in the preparation of a strategic operational medium-term plan. (12 months)
- 12.** APO should carry out an assessment of human resources and any staffing gaps necessary to handle the workload in line with its mandate. The PG and SCP should expeditiously review and meet the needs, as appropriate. (6 months)
- 13.** APO should develop and request a fully justified budget to allow it to carry out its mandate effectively. (12 months) The PG and the Parliament should normally expeditiously review and approve such a request. (12 months)
- 14.** APO should take all necessary steps to block leaks, and publicly identify and punish offenders. (immediate and continuous)
- 15.** APO should improve the quality of its statistical data collection and analysis. This should be reflected in all its activity reports. (next annual report)
- 16.** APO should improve its public outreach, explaining the results of its work, including its decisions to close or not to open or pursue investigations in certain, especially high-profile corruption cases. (immediate).

2. National Anti-corruption Centre (NAC)

2.1. Functional mandate

History

NAC is the successor of the Centre for Combating Economic Crimes and Corruption (CCECC), created in 2002, following the merger of the Economic-Financial Police Department and the Anti-Corruption Department of the MIA, Financial Guard and the Department for Financial Control and Revision of the Ministry of Finance. Its creation stemmed from the need to institute an efficient state structure to fight economic crimes and corruption, but also to streamline the mandate and activity of control bodies. According to an interlocutor, CCECC was created by then President Vladimir Voronin of the Communist party, following the privatisations of the '90s, to make control easier in this area and to give orders more efficiently.

In the last 10 years, there were nine reforms and structural reorganisation processes of NAC. Its procedural mandate was amended three times. Five directors came and went, none serving their mandate in full. Since 2012, there have been various bodies to which NAC was subordinate.⁶⁹ Subordination to either Parliament, Government or the Presidency, in terms of appointment of the leadership of the institution and reporting, affected its independence.

On 1 October 2012, the former CCECC became the NAC. Stricter criteria for the appointment of the head of the institution were introduced, public competition to select the head was organised and integrity requirements vis-a-vis employees were toughened.

NAC investigated several government officials in 2013⁷⁰. Later, Parliament dismissed the entire government for allegations of corruption⁷¹. After half a year, a new reform of NAC was implemented: independence guarantees were annulled, and the use of some criminal procedure instruments was limited. At the end of 2012, the CPC was amended so that judicial authorization for wiretapping and recording communication of suspects of corruption could be possible only after informing the suspects in advance of suspicions against them. In 2014, this provision was reversed, and in 2015, NAC's independence guarantees were restored.⁷²

NAC is an important player with the mandate to safeguard and react to risks and acts of money laundering and terrorism financing. Precisely for these reasons, some of NAC's authority (for example, the mandate of the FIU, then a part of NAC, to block suspicious transactions) was removed during the Bank Fraud period, from 2011 to 2014. This was carried out at the initiative of Valeriu Guma, a Member of Parliament (MP)⁷³, in 2010 and by Government decision in 2011⁷⁴. Thereafter, the FIU was no longer able to block suspicious transactions until 2014.

Currently, NAC reports to the Parliament, which appoints its director. The appointment is done by a majority vote in the Parliament upon the proposal of at least 20 MPs, and the positive opinion of the Legal Committee. The Director is appointed for a 5-year, non-renewable term. No NAC director to date has served the full period.

⁶⁹ National Anti-corruption Centre website <https://www.cna.md/tabview.php?l=ro&idc=98&t=/CNA/Ce-facem-noi>.

⁷⁰ "The searches carried out by NAC in the Government, Fiscal Inspectorate but also in other institutions represents a measure undertaken by the Democrat Party (DP) against the Liberal Democrat Party (LDP) for political reason. The searches had been conducted as measure undertaken by DP since NAC is still controlled by a person loyal to DP", declared the president of the Parliament fraction in the Parliament in February 2013, www.ipn.md/ro/aie-invinuiri-reciproce-legate-de-actiunile-cna-7965_1003487.html.

⁷¹ Decision of the Parliament no. 28 on the motion of no confidence in respect of the Government, 5 March 2013, https://www.legis.md/cautare/getResults?doc_id=17419&lang=ro.

⁷² *Viorel Chetradu criticises anti-corruption reforms in Moldova*, Ziarul de Garda, 16 November 2016, www.zdg.md/stiri/stiri-justitie/chetradu-critica-reformele-anticoruptie-timp-doi-ani-cna-a-fost-nevoit-sa-lucreze-intr-un-regim-de-comedie-pentru-corupti/.

⁷³ Draft law initiative no. 67 by MP Valeriu Guma, on the amendment and completion of Article 14 of the Law on the Prevention and Fight Against Money Laundering and Terrorist Financing, 2 June 2010, <https://www.parlament.md/ProcesulLegislativ/Proiecte-deactelegislative/tabid/61/LegislativId/535/language/ro-RO/Default.aspx?fbclid=IwAR0hkI6GGUqYeoFo335-sOcTPU8CEyfSwqr-fObHejjcyrnmfZ5wWnSAj0mE>.

⁷⁴ Government Decision no. 148 on approving the draft law for amending and completing the Law on the Prevention and Fight Against Money Laundering and Terrorist Financing, 14 March 2011, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=337840>.

The Criminal Assets Recovery Agency (CARA) is an autonomous specialized subdivision under the National Anticorruption Centre. The Financial Investigation Unit (FIU), which used to be another autonomous subdivision, left the NAC umbrella upon its independence in 2017.

Over the years, Moldovan governments have attached high priority to fighting corruption in various policy documents. Several policies have been adopted. NAC was given a central role in the monitoring and evaluation process and functioned as Secretariat to strategies' monitoring groups. According to NAC, the National Anti-Corruption Strategy for 2011-2016 was 87% implemented. Two evaluation and monitoring reports⁷⁵ were drafted, one in 2018, another in 2019, which provided a quantitative and qualitative analysis of the progress of actions and identified challenges confronted by the implementing entities. Starting from 2017, the National Integrity and Anticorruption Strategy 2017-2020 was implemented, a period subsequently extended by Parliament in 2020 for an additional two years. In 2021, an evaluation and monitoring survey⁷⁶ was issued pointing out progress and deficiencies in implementation.

Mandate

Under the Law on the National Anticorruption Centre⁷⁷, NAC has the following mandate:

1. Prevention, detection, investigation and combating misdemeanours and offences of corruption and those related to corruption, as well as acts of corrupt behaviour;
2. Apply its anti-corruption expertise in review of draft legislative acts and of draft normative acts of the Government, as well as other legislative initiatives presented in Parliament, in order to comply with the state's corruption prevention and control policy;
3. Assess institutional integrity, monitor the implementation of integrity management plans and assess progress in that connection;
4. Perform operational and strategic analysis of acts of corruption, of related acts and facts with respect to such acts;
5. Conduct recovery of criminal assets (carried out by CARA, analysed below).

NAC's main function is to conduct criminal investigations, gather information, analyse it, and perform secret surveillance measures in respect of 19 criminal offences listed in Article 269 of the CPC (inter alia, active and passive bribery, trading in influence, abuse of office, illicit enrichment and money laundering). The prosecutors from APO supervise the NAC criminal investigations and represent cases sent to courts of first instance.

In the second half of 2016⁷⁸, criminal investigation into "high-profile" corruption cases was assigned exclusively to APO. Subsequently, 15 criminal investigation officers and 15 investigators from NAC were seconded to APO, according to the staffing table.

NAC also conducts anti-corruption reviews of draft laws. Such reviews became compulsory since 2006 for all Government decisions and laws to be approved by Parliament. NAC identifies the corruption risks that might emerge, factors which generate these risks and proposes recommendations to address them. Reportedly, nearly two-thirds of the respective recommendations are taken into account by authorities.

Another function of NAC is to carry out institutional integrity evaluation. The institutional integrity evaluation is a process of identifying the risks of corruption within a public entity with the help of analytical and practical methods (professional integrity testing), describing the factors that determine the

⁷⁵ NAC, cna.md/pageview.php?l=en&idc=68&t=/National-Anti-corruption-Strategy/Strategy-implementation/Monitoring-reports/Monitoring-reports/.

⁷⁶ *National Integrity and Anti-corruption Strategy 2017-2020. Impact Monitoring Survey - Moldova 2021*, UNDP, 16 December 2021, www.undp.org/moldova/publications/national-integrity-and-anti-corruption-strategy-nias-2017-2020-impact-monitoring-survey-moldova-2021.

⁷⁷ Law no. 1104 on the National Anti-Corruption Centre of 6 June 2002, www.legis.md/cautare/getResults?doc_id=127720&lang=ro#.

⁷⁸ The CPC was amended on 1 August 2016. www.legis.md/cautare/getResults?doc_id=94166&lang=ro, Law no.159 on specialized prosecution offices adopted on 7 July 2016 www.legis.md/cautare/getResults?doc_id=94155&lang=ro#.

identified risks and their consequences, as well as offering recommendations for reducing them.⁷⁹ This process is designed to last for six months, and it involves covert operations outside the scope of criminal investigations. A judge authorises this evaluation, where an undercover investigator is infiltrated into the institutions targeted for integrity testing, to determine if employees are engaging in corrupt behaviours. The integrity evaluation procedure is classified.

NAC also has an analytical department which issues studies regarding the phenomenon of corruption. The information available on the Website indicates multiple studies on, inter alia, analysis of the profile of the criminal in corruption cases, judicial practice in corruption cases based on annual court decisions, judicial practice in applying fines for corruption cases, etc. No study on high-level corruption has been made public so far.

The asset recovery function will be analysed in a separate chapter below.

2.2. Performance

Staff

The table below indicates the total number of staff within NAC over the past six years. It is important to note that the FIU became an independent institution in 2017, the number of CARA personnel increased and the number of staff in territorial offices decreased. The number of personnel engaged in combating corruption increased and the personnel engaged in preventing corruption dropped (due to the institution's change of objectives in the most recent years). When new leadership is appointed, often there is substantial turnover, especially if reforms are announced. According to many interviewees, the fluctuation of staff within the institution is particularly high.

Table 9. Number of staff by activity (According to staffing table/de facto employed)

Department	2017	2018	2019	2020	2021	2022 (9 months)
Leadership	3/1	3/3	3/2	3/2	3/1	3/2
Combating corruption	28/27	37/34	37/34	37/35	37/33	37/28
Criminal investigation	37/30	45/44	45/42	45/44	45/41	45/37
Corruption prevention	23/21	21/19	21/19	21/21	21/20	21/19
Integrity testing	18/16	8/5	8/6	8/6	8/7	8/6
Intelligence analysis	18/13	12/12	12/12	12/12	12/12	12/8
CARA	8/6	18/17	18/17	35/18	35/29	35/26
Other units	157/140	142/138	142/132	139/134	139/126	139/117
Total central office	282/254	286/272	286/265	300/282	300/269	300/243
Territorial offices	68/58	56/54	57/50	59/55	59/50	59/49
TOTAL	350/312	342/326	342/315	359/337	359/319	359/292

Source: information received from NAC

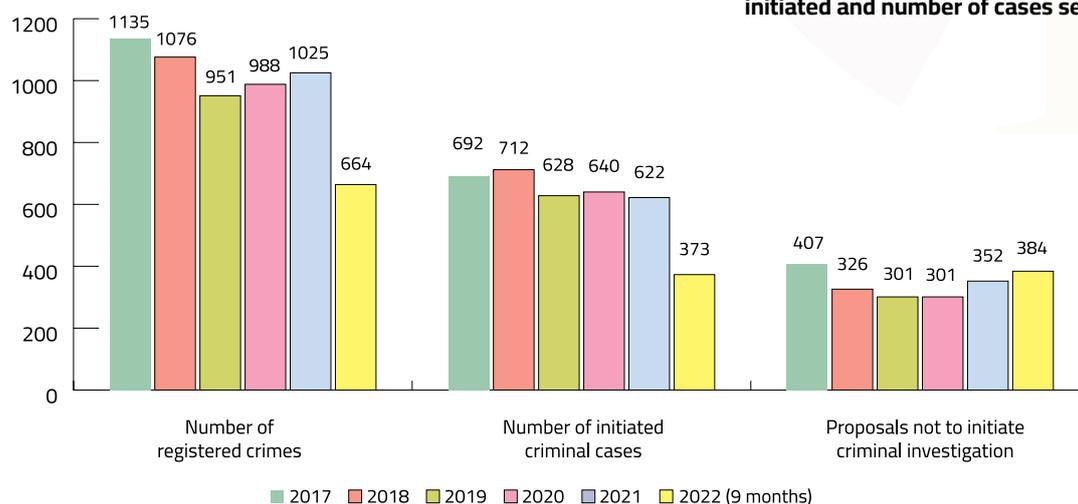
The number of criminal investigators increased by four in 2018 and remained the same for several years with four vacancies in 2021. With 743 identified crimes in 2021, a criminal investigation officer carries an average annual caseload of 18.

⁷⁹ Law no. 325 on evaluating institutional integrity of 25 December 2013, https://www.legis.md/cautare/getResults?doc_id=133183&lang=ro#.

Criminal investigation

The number of registered crimes by NAC decreased significantly during the 2017-2019 period, but increased in 2021. The number of initiated criminal cases has fluctuated within a relatively narrow band. As to the number of proposals not to initiate criminal investigation, their number drastically fell in 2019 and 2020, with some recovery in 2021. An interviewee attributed this fluctuation to internal power struggles not within NAC, but within the prosecution service that paralysed the capacity of APO to carry out its mandate.

Figure 4. Number of identified crimes, initiated and number of cases sent to court



Source: information received from NAC

The Evaluation Report of the Parliament of NAC activity for 2016-2021⁸⁰ found that NAC annual reports for 2018-2020 presented data to the public which do not correspond to the reality of cases investigated; NAC was found deficient in keeping statistics of investigated and finalised cases; and it does not properly record criminal cases it has initiated.

NAC carries out criminal investigation through a series of actions. The investigative officer searches for and collects information. The criminal investigation officer analyses this collection and presents it to the prosecutor. The criminal investigation department deals with extracting information from equipment, phones and laptops seized following searches. They also implement visual observations and other covert measures. The criminal investigation department is currently working on 387 cases.

Between 2016 and the first nine months of 2022, the number of criminal cases handled by NAC decreased by approximately 50% (2,184 cases in 2016 to 1,008 cases in the first nine months of 2022). In addition, the number of cases where NAC carried out investigation for a period more than one year decreased (from 293 in 2016 to 96 in the first nine months of 2022). However, the number of cases on which the investigation lasted for more than three years increased.

⁸⁰ Evaluation Report of the Activity of the National Anti-corruption Centre for 2016-2021, Parliament, 2021, <https://www.parlament.md/LegislationDocument.aspx?Id=876fdabb-8f1f-4b0e-8048-7c77132c9674>.

Table 10. Number of criminal cases dealt with by NAC

	2016	2017	2018	2019	2020	2021	2022 (9 months)
No. of criminal cases dealt with by NAC	2,184	1,991	1,985	1,891	1,530	1,321	1,008
Investigation period longer than one year	293	245	318	330	151	92	96
Investigation period longer than three years	124	122	121	233	233	159	168

Source: information received from NAC

In 2016, NAC seconded 17 officers to APO (though there were 30 positions that should have been filled, according to the staffing table), which led to a backlog in NAC's work. According to NAC, for cases in which APO conducts the criminal investigation, approximately 80% of the evidence gathered comes from NAC. NAC has good resources, including its technical services, both for collecting information, but also in analysis of that information.

When it comes to the review of legislation from the anti-corruption perspective, there are eight staff members examining a continuously increasing number of draft laws. In 2021, on average an employee worked on over 92 review reports and 59 opinions. During 2017-2021, 4,000 draft laws were submitted to NAC (1,463 in 2020 and 959 in 2021). It has been reported that 65-70% of NAC's opinions were taken into account in the final draft. However, besides percentages there is no assessment as to the nature of the suggestions that are incorporated. The various legislative measures that allowed for the capture of the Moldovan state seemed to have successfully completed the legislative process without being affected by this anti-corruption review⁸¹. More strikingly, the Director of NAC himself, Viorel Chetaru presented in 2011 a legislative proposal that facilitated large scale fraud⁸². This proposal was promoted by Alexandr Stoianoglo⁸³ (at that time head of the National Security, Defence and Public Order Committee of the Parliament) which allowed for the suspension of FIU decisions to block the accounts into which the large transfers from the Russian Federation came.

The review of legislation from the anti-corruption perspective would sit better with the Ministry of Justice. Those arguing in favour of keeping the current functional arrangement use the arguments that NAC salaries are higher than in MoJ, and that the prestige of working in NAC is higher. A starting salary in NAC is approximately EUR 350-400 per month, while in the MoJ the equivalent remuneration would be half. While salaries are an important concern, they cannot dictate the attribution of functions within the state and efforts should be made to ensure a fair compensation for the work of public officials throughout the public sector. In terms of prestige of the function, interlocutors pointed to the special rank similar to the military and the special status NAC personnel enjoy. The idea that anti-corruption review is better performed by personnel with special status similar to military officers is hardly defensible. This is a purely civilian function and should be performed by civilians. Another argument raised by interlocutors for keeping this function with NAC is that the department performing review can liaise better with the operational departments to which MoJ does not have access, as well as gain access to various databases and registers open to NAC. It is important to underline here the need to ensure that NAC uses the tools available for the proper purposes. Registries and databases are open to NAC for criminal investigation purposes, and their use outside this policy area raises serious concerns. Similarly, operational information regarding corruption investigations should be insulated from access by those within NAC not engaged in such probes. If analysis is made as to the underlying vulnerabilities that allow for corrupt behaviours to occur, such documents can be shared with public officials working on anti-corruption review irrespective

⁸¹ These include draft laws enacted which made the bank fraud and laundromat happen, the attempted amnesty of capital or the change of the electoral system from majoritarian to a mixed system in 2017.

⁸² Report of the Parliamentary Inquiry Commission, *Laundromat typology*, May 2021, Parliament, 2021, page. 19, [https://anticoruptie.md/media/2017%20Dosare/514997047-Raportul-Comisiei-Parlamentare-Laundromatul%20\(1\).pdf](https://anticoruptie.md/media/2017%20Dosare/514997047-Raportul-Comisiei-Parlamentare-Laundromatul%20(1).pdf).

⁸³ *Ibid.* page 20.

of whether they are located in NAC or MoJ. On the other hand, some have mentioned that during several years when major crimes were happening in the Republic of Moldova, NAC shied away from its main mandate, to investigate corruption; rather, it highlighted its prevention function.

The department which deals with strategic and operational analysis of corruption has 12 staff members. During 2021, for example, 15 strategic analysis reports were drafted, three analytical strategic notes and 355 operational analysis reports on the phenomenon of corruption in cases investigated by NAC. The same department issued 33 other reports.⁸⁴ Thus, the totality of these documents vis a vis the number of staff constitutes a significant workload.

In the institutional integrity area, there are five staff members, and in professional integrity, eight. In the first phase of the integrity check process (all four phases have been described above), an institutional audit is carried out where the institution's policies are examined with respect to the degree of implementation. During 2021, six institutions were evaluated. More than 380-400 concrete recommendations to remove deficiencies or to improve deficient implementation of the law were put forward. The classified part of the report reflects the work of undercover agents into the agency, to test employees' professional integrity by various means (e.g., proposing a bribe).

The information accumulated following this institutional integrity evaluation can be used at the sole discretion of the institution, thus can be manipulated and kept for blackmail. Although oversight of this procedure is done by a judge who checks the adequacy of the evidence in a closed hearing, the mechanism is dangerous due to the mainly unreformed judiciary, prosecution and MIA. Its value is questionable, especially since the maximum sanction for the evaluated person is dismissal.

No public data is available as to the use of this mechanism. According to the Evaluation Report of the Parliament, NAC does not assess qualitatively the progress of the institution in implementing planned activities; rather, it calculates the percentage of planned versus implemented activities without indicating whether the integrity plan had any impact on the issues it was meant to address. Also, in the vast majority of cases, it appears that integrity plans were not implemented by their deadlines, but NAC took no steps in this regard, such as to propose disciplinary action or dismissal of the agency head. NAC did not perform any repeat evaluations, further attenuating the value to the exercise. In respect of the six entity evaluations of 2021, reports were drafted which include recommendations to mitigate identified integrity risks. The leader of the evaluated entity is obliged to adopt an integrity plan within 30 days from the issuance of the report. NAC provides information in its annual reports on the institutions which adopt these plans and monitoring reports on the implementation of the integrity plans. Moreover, in cases where deficiencies had been noted, it was not clear whether/what sanctions had been applied. The utility of this tool needs further evaluation.

In 2014, the Venice Commission stated in an *amicus curiae* brief to the Moldovan Constitutional Court that the application of integrity testing to the judiciary "has the potential of negatively interfering with the principle of judicial independence, the separation of powers and the rule of law."⁸⁵ In 2015, the Constitutional Court decided that such testing cannot be used against judges⁸⁶. In 2021 it decided that any such results must be presented to the official that was subjected to testing, and that the respective official has the right to challenge the findings in court⁸⁷. The entire integrity testing mechanism as presently applied raises serious concerns as to both its utility and legality.

⁸⁴ Activity Report of the National Anti-corruption Centre for 2021, cna.md/libview.php?l=ro&idc=143&id=3807&t=/Studii-si-analize/Rapoarte-anuale/Raport-de-activitate-al-CNA-pentru-anul-2021.

⁸⁵ *Amicus Curiae* brief for the Constitutional Court of the Republic of Moldova on certain provisions of the Law on Professional Integrity Testing no. 789/2014, Venice Commission, 12-13 December 2014, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)039-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)039-e).

⁸⁶ Decision no. 7 on the constitutionality control of some provisions of the Law no. 325 on professional integrity testing, Constitutional Court of 16 April 2015, <https://constcourt.md/ccdocview.php?tip=hotariri&docid=532&l=ro>.

⁸⁷ Assessment of the result of the professional integrity testing by the court without the participation of the tested person and the impossibility of contesting the court decision regarding the assessment of the testing result, no. 41g/2021, Constitutional Court, 7 December 2021, <https://www.constcourt.md/libview.php?l=ro&idc=7&id=2334&t=/Media/Noutati/Aprecierea-rezultatului-testarii-integritatii-profesionale-de-instanta-de-judecata-fara-participarea-persoanei-testate-i-imposibilitatea-contestarii-incheierii-judecatoreti-privind-aprecierea-rezultatului-testarii-sesizarea-nr-41g2021>.

As to the corruption prevention function, NAC reports in 2021 it carried out 245 activities in respect of 7,419 public agents, 678 students and pupils and 300 representatives of private institutions and other categories. Fifteen courses of professional development have been designed for civil servants. Substantial resources have been invested. Nevertheless, this activity seems to be out of place in an institution with the main mandate to investigate corruption.

2.3. Main challenges

In 2021, Parliament evaluated NAC's activity from January 2016 – September 2021⁸⁸. Following the review, it was found that NAC was insufficiently effective in preventing and fighting corruption, the institution was not independent in its activity and the directors have not organized the agency to ensure that it conducts an efficient fight against corruption. Inter alia, the Parliament provided the following findings:

- The annual reports of NAC contain misleading data as to the criminal cases it examined.
- There is a high number of cases where the criminal investigation lasts for more than three years. This may indicate a selective case management approach that can lead to reaching the statute of limitation for crimes under investigation, thus failing to hold an alleged perpetrator criminally accountable.
- In certain cases, APO indicated that NAC is sabotaging its procedural actions, stalling the criminal investigation. APO also accused NAC of failing to conduct such investigations fully and/or in timely fashion.
- APO also revealed leaks of information⁸⁹ on certain cases (asking for benefits from the person who admitted the guilt, loss of corpus delicti, etc.).
- Only 13% of NAC cases have been sent to court, which Parliament viewed as an indicator of NAC's ineffectiveness in the fight against corruption. The majority of cases sent to court reflect less serious crimes, which points to the fact that NAC is focusing on quantity, not quality.
- Analysis regarding cases initiated in respect of judges and prosecutors indicates that a significant percentage of these never reach the court. For those that do, if defendants are found guilty, only fines are applied, the acts are recategorized as misdemeanours or the persons are acquitted.
- The institution has no objectives for strategic development, effective risk management or ways in which it could become more efficient, including streamlining its activities. There are no analytical reports that put forward measurable indicators of performance that address institutional risks.
- Institutional integrity testing has not reached its objectives. The majority of evaluation reports contain no data as to when the institutional integrity evaluation was carried out.

Mandate

The broad mandate that NAC enjoys allows the institution not to focus on key issues but to pick and choose its engagements, that is, those activities which are easiest to achieve.

In the 2014-2015 annual report of NAC⁹⁰, it claims to have reviewed 1,783 draft regulatory acts. Opinions were drawn up in respect of 463 drafts and 1,329 drafts were subject to "corruption-proofing" as a result of NAC expert review. During the same period, NAC detected 1,031 corruption or corruption-related crimes (498 cases in 2014 and 533 cases in 2015). Consequently, NAC, jointly with prosecutors, sent 531 criminal cases to court.

⁸⁸ *Evaluation Report of the Activity of the National Anti-corruption Centre for 2016-2021*, Parliament, 2021, <https://www.parlament.md/LegislationDocument.aspx?id=876fdabb-8f1f-4b0e-8048-7c77132c9674>.

⁸⁹ The leak of information was also subject of the Moldovan Supreme Security Council of 30 March 2022 (<https://www.mold-pres.md/en/news/2022/03/30/22002390>) and 5 September 2022 (<https://presedinte.md/rom/comunicate-de-presa/presedinta-maia-sandu-dupa-sedinta-css-vrem-sa-discutam-despre-bani-confiscati-nu-doar-despre-bani-sechestrati>).

⁹⁰ *Progress Report of the National Anti-corruption Centre 2014-2015*, National Anti-corruption Centre, 31 December 2015, <https://www.cna.md/doc.php?l=en&idc=143&id=1305&t=/Studies-and-Analyses/Annual-Report/Progress-Report-of-the-National-Anti-Corruption-Centre-2014-2015>.

It is noteworthy that this 2014–2015 report dedicates seven pages to examples of draft laws subject to corruption-proofing, but only a few paragraphs to the case of Banca de Economii’s collapse⁹¹.

In 2019, the then NAC director Bogdan Zumbreanu referred to accusations that NAC focuses on petty corruption, rather than on high profile cases⁹². He stated, “...There is no petty nor high profile...” He cited the example of a citizen who had to sell his cow in order to bribe a doctor. The NAC director stated that this case is equally important to NAC as other types of corruption. He also averred that, “...If you understand the importance and seriousness of petty corruption, you realise that the problem is actually in petty corruption, rather than in the high-profile...”⁹³.

Anti-Corruption awareness

NAC spends considerable effort on organizing training programs for public officials, students, and the business community on anti-corruption and integrity issues, runs awareness campaigns and conducts public lectures. Only in 2021 it carried out 245 training activities for 8,450 persons and 15 online courses for 527 persons. The National Integrity Authority (NIA) does the same. Only in 2021, NIA trained 5,000 subjects of asset declarations, conducted public lectures for students, and issued 100 guidelines on integrity matters.

Integrity testing

Concerns have been raised with regard to the impact and usefulness of the integrity testing procedure. More worrying is the doubtful legality of the exercise with respect to the right to privacy and the right to a fair trial, as well as with regard to the appropriateness of collecting such sensitive data outside the realm of criminal procedures. The first phase of the integrity evaluation of an institution is to identify corruption risk, the next step is to test the professional integrity of agents within, then to describe and analyse the risks and to provide recommendations⁹⁴. The public agent is subject to a professional integrity test where the tester applies some virtual, simulated situations, similar to those in the service activity. It materializes through covert operations and is conditioned by the activity and behaviour of the tested public agent, in order to passively track and establish his/her reaction and behaviour. Thus, the test determines the degree of damage to the climate of institutional integrity and the risks of corruption within the public entity in the process of evaluating institutional integrity. The problems with this mechanism stem from the fact that it can be considered entrapment despite the fact that a judge authorises this measure. In a Constitutional Court decision⁹⁵, the provisions from the Civil Procedure Code which allowed judges to assess the findings of the integrity testing mechanism have been eliminated from the law.

Anti-corruption review

The nature of the anti-corruption review, rather, fits into the Ministry of Justice or other public entity which deals with setting policy or in drafting laws, rather than in an investigative body. It is unclear whether the review department makes use of NAC’s access to different sorts of confidential information in commenting on corruption risks of the legislation. Such sensitive information should not determine NAC’s opinion on the draft law.

⁹¹ During January and February 2013, a public relations campaign was conducted against BEM, heavily publicized by television channels, resulting in depositor panic and withdrawals of MDL 900 million, or more than 10% of BEM’s capital. The situation became a crisis, and a proposed capital injection became the subject of intense political debate. More details in the report “*The Offshore Republic*”. *Review of factors leading to systemic fraud and money laundering in Moldova’s banking, financial and insurance sectors*, Independent Anti-Corruption Advisory Committee, 2022, <https://ccia.md/wp-content/uploads/2022/07/Offshore-Republic-factors-leading-to-systemic-fraud-money-laundering-financial-and-insurance-sectors-Moldova.pdf>.

⁹² *High-level or petty corruption? How does the NAC Director respond to the accusations brought against the institution*, TVR Moldova, 7 January 2019, <http://m.tvrmoldova.md/economic/coruptia-mica-sau-coruptia-mare-cum-raspunde-seful-cna-la-acuzatiile-aduse-institutiei/>.

⁹³ *NAC Director: “High level and petty corruption are all the time subject for contradiction”*, Oficial.md, 8 June 2019, <http://oficial.md/politica/directorul-cna-coruptia-mare-si-coruptia-mica-este-un-mar-al-discordiei-de-fiecare-data>.

⁹⁴ *Ibid.*

⁹⁵ Assessment of the of the result of the professional integrity testing by the court without the participation of the tested person and the impossibility of contesting the court decision regarding the assessment of the testing result no. 41g/2021, Constitutional Court, 7 December 2012, www.constcourt.md/libview.php?l=ro&idc=7&id=2334&t=/Media/Noutati/Aprecierea-rezultatului-testarii-integritatii-profesionale-de-instanta-de-judecata-fara-participarea-persoanei-testate-i-imposibilitatea-contestarii-incheierii-judecatoreti-privind.

Cooperation between APO and NAC

NAC has always blamed APO for its failures and vice versa. Over the years, there have been almost continuous fights between these institutions. In 2015, for example the then deputy director of NAC⁹⁶, Cristina Tarna, stated that NAC has been hindered by the lack of reforms in APO (which took place in 2016, while in NAC in 2012). According to the then NAC officials, after the Centre had taken steps to reduce the risks of political interference, it would initiate criminal investigations and send case files to APO, where they would be stalled. In return, APO has claimed deficiencies in the way in which NAC investigations have been conducted.

Subordination of NAC

Subordination to the Parliament in the Moldovan context, ab initio, undermined the capacity of the NAC to focus on acts of high-level corruption which involve politicians or result from political patronage. In October 2012, NAC was put under Parliamentary control. In May 2013, NAC was transferred back under Government and the procedure for appointment of the director changed. NAC went again under Parliamentary control in 2015. These frequent changes show the political relevance of the institution that investigates corruption.

Various political stakeholders tried to strengthen their leverage over NAC and to undermine that of their political competitors. The origin of this practice dates back to 2009 when the parties of the Alliance for the European Integration split institutions/heads among themselves.⁹⁷

The political influence over NAC stems from a series of actions or inactions. For example, a prior head of NAC, Viorel Chetragaru, on multiple occasions informed the leadership of the country about the 2011 raider attacks on Banca de Economii (BEM) and ASITO.⁹⁸ Allegedly he was aware of the persons behind these frauds and raised concerns.⁹⁹ As the Report of the Parliamentary Inquiry Committee on the Bank Fraud and devaluation of the banking system concluded, all state institutions in the period 2013–2014 literally waited for the collapse of the banks concerned.¹⁰⁰

Remuneration

While the salary of the NAC administration and the remuneration of the head of department might seem acceptable, criminal investigation officers are paid much less, 40%, than department heads. The highest number of vacancies is recorded amongst those with the lowest incomes. While criminal investigation officers are and should be the backbone of NAC, they are among the least remunerated. This fact also speaks to the inappropriate addition to NAC of peripheral functions over the years, outside of its core mandate of corruption investigation, such as institutional integrity evaluation, integrity testing and anti-corruption expertise

⁹⁶ Deputy Director of NAC Cristina Tarna about the factors which block the fight against corruption, National Anti-corruption Centre, 17 February 2015, <https://www.cna.md/libview.php?l=ro&id=952&idc=5&t=Mass-media/Comunicate-de-presa/Directorul-ad-junct-al-CNA-Cristina-arna-despre-factorii-care-blocheaza-lupta-cu-coruptia/>.

⁹⁷ *Ibid.* In the secret annexes of establishing the Alliance for the European Integration, the appointment of the heads of the independent institutions were “divided” among the AIE parties, https://www.publika.md/exclusiv-vedeti-aici-anexele-se-crete-ale-acordului-de-constituire-a-aie_572041.html.

⁹⁸ Report of the Parliamentary Inquiry Committee on the bank fraud and devaluation of the banking system, Parliament, 2019, https://www.legis.md/cautare/getResults?doc_id=121135&lang=ro.

⁹⁹ On 29 July 2013, NAC presented a report to the Prime Minister, the President and the Prosecutor General, in which it refers to operational data with respect to the bank fraud and proposed that the three banks are required to return the investments from financial institutions in the Russian Federation. Report of the Parliamentary Inquiry Committee on the bank fraud and devaluation of the banking system, Parliament, 2019, http://alegeri.md/w/Raportul_Comisiei_de_anchet%C4%83_privind_frauda_bancar%C4%83_%C8%99i_devalizarea_sistemului_bancar_din_Republica_Moldova; What information did the former head of NAC Viorel Chetragaru provide to the inquiry committee on the bank fraud during hearings, Tv8, 5 July 2019, <https://tv8.md/2019/07/05/ce-informatii-a-oferit-ex-seful-cna-viorel-chetragaru-comisiei-de-ancheta-privind-frauda-bancara-in-cadrul-audierilor>.

¹⁰⁰ When invited in the Parliament in 2015 to explain the disappearance of the “billion” from the Moldovan banks, the then NAC director, Viorel Chetragaru, called the Kroll report “literary work”. The statements of Viorel Chetragaru about KROLL report: literary work!, Agora.md, 7 May 2015, agora.md/stiri/8537/video--declaratiile-lui-viorel-chetragaru-despre-kroll-beletristica.

Table 11. Salaries of the NAC staff (as of 2021)

NAC staff	Minimum	Maximum
Administration	MDL 28,600 / EUR 1,466	MDL 33,925 / EUR 1,740
Head of department	MDL 22,000 / EUR 1,100	MDL 31,100 / EUR 1,600
Criminal investigation officer	MDL 13,800 / EUR 700	MDL 17,800 / EUR 900

Source: information received from NAC

Information leaks

Information leaks represent another challenge. These have become much more widespread in recent years. Anticorruption prosecutors complain that shortly before apprehending suspects, searching premises or organising sting operations, the suspects have already fled the country or otherwise absconded. In a very recent case of illegal financing of a political party¹⁰¹, there was a leak of information that APO was about to initiate a criminal case.

The investigations of leaks should constitute a priority for NAC, since these interfere with the criminal investigation proceedings and impair public trust in justice. This issue is serious enough that it was raised at the meetings of the Supreme Security Council of 30 March and 5 September 2022. Stricter mechanisms must be put in place. Also, when investigations come to nought, suspects are nevertheless discredited through leaks. According to the president of the country, there is a trend - first "rumours" (leaks) appear in the news, TV shows cover arrest, followed by a long silence where there is no finality. The PG Dumitru Robu has sent to court many high-profile cases of corruption of which nothing is subsequently heard.¹⁰²

2.4. Recommendations

Both NAC and APO are currently overloaded with petty cases and neither focuses on high-level and systemic corruption. It is suggested the consolidation of the criminal investigation function for high-level corruption should take place within APO, as discussed in the relevant section above. NAC's mandate should be investigation of systemic corruption. For a transitional period of two years, petty corruption should be investigated by NAC while in parallel NAC and MIA cooperate on building capacity for investigation skills within MIA for investigations of petty corruption. The transfer should be completed within two years. After the two-year transition, NAC should focus solely on investigation of systemic corruption. Criminal investigation carried out by NAC should be supervised and sent to court by prosecutorial offices in those localities where NAC's territorial offices are located in.

The following recommendations are made:

1. Parliament should amend the Law on NAC and other relevant legislation to limit NAC's mandate to investigating systemic and, for a transitional period, petty corruption, and remove other functions from its mandate (i.e., prevention/awareness raising, anti-corruption review and institutional integrity evaluation). Systemic and petty corruption should include all corruption and corruption related offences that are not in APO's exclusive competence (3 months). The following current NAC competencies are recommended to be transferred or amended as follows:
 - a. Anti-corruption review should be transferred to MoJ;
 - b. Corruption prevention awareness raising efforts should be transferred to NIA;

¹⁰¹ The case of the illegal financing of the "SOR" Party: the accountant of the formation, Olga Romanova, one of the seven people who left the country in July, detained for 72 hours, Ziarul de Garda, 12 August 2022, <https://www.zdg.md/stiri/stiri-justitie/dosarul-finantarii-ilegale-a-partidului-sor-contabila-formatiunii-olga-romanova-una-din-cele-sapte-persoane-care-in-iulie-au-parasit-teritoriul-tarii-retinuta-pentru-72-de-ore/>.

¹⁰² Supreme Security Council proposed legislative changes on execution of judicial act, progress in corruption cases - Moldovan president says, 5 September 2022, <https://www.moldpres.md/en/news/2022/09/05/22006617>.

- c.** Institutional integrity testing should be abolished and Integrity testing should be maintained only as an internal tool for hiring and/or disciplinary purposes within the law-enforcement institutions;
 - d.** NAC's staffing table should be adjusted accordingly.
- 2.** NAC should assess what constitutes petty corruption in Moldova's context and present to Parliament a clear delineation between systemic and petty corruption in order for the latter to amend the legislation accordingly by assigning petty corruption to MIA for investigation. (24 months)
- 3.** Parliament should provide adequate, attractive remuneration for NAC staff (18 months).
- 4.** NAC is to retain and strengthen its intelligence analysis and active corruption prevention/administrative investigation of integrity breaches. (immediate and continuous)
- 5.** NAC should take determined action to stop leaks. (immediate and continuous)
- 6.** The National Institute of Justice and Police Academy should allocate appropriate resources to train sufficient staff (prosecutors, criminal investigation officers and criminal investigators) to examine petty corruption cases, with the involvement of expertise from APO and NAC. (12 months)
- 7.** Development partners should help NAC in capacity building on investigating systemic corruption, especially regionally, and help increase the capacity of the MIA staff to be able to properly investigate petty corruption cases. (immediate and continuous)

3. Criminal Asset Recovery Agency (CARA)

3.1. Functional mandate

The Criminal Asset Recovery Agency (CARA) is an autonomous specialized agency within NAC. It was created in March 2017 by the Law on the Criminal Asset Recovery Agency¹⁰³, which became functional in 2018. Upon creation it had eight staff members; currently, there are 32 employees.

CARA has the following functional mandate: to carry out financial investigations and trace proceeds as part of ongoing criminal proceedings; to evaluate, manage and dispose of proceeds; to keep records of confiscated proceeds of crime; to negotiate the repatriation of proceeds of crime; to cooperate internationally and exchange information with foreign competent authorities; to represent the interests of the state and of legal entities under public law in civil proceedings to recover proceeds, including from abroad. These functions can be divided into two main clusters:

- identify, trace and organize return of corruption proceeds (asset recovery); and
- organize the management of seized and confiscated assets in corruption cases (asset management).

According to the CPC, the process of recovering proceeds has four phases:

- tracing assets and accumulation of evidence;
- freezing proceeds;
- confiscation and reparations of damages (ordered by court, managed and disposed of by the State Tax Service);
- return of proceeds (enforced by bailiffs).

Under the law, CARA covers only the first and second phases. The role of CARA is not proactive; for it to initiate financial investigations and trace proceeds, a request from the law enforcement body/prosecutor is needed.

Upon its establishment, CARA's mandate covered 27 crimes, while now the mandate has been extended to 54¹⁰⁴. Initially, it had under its mandate corruption offences, corruption-related offences, money laundering, banking offences, terrorist financing and illegal financing of political parties. Subsequently, crimes were added relating to smuggling, narcotics trafficking, human trafficking, tax evasion and the organization of illegal migration.

3.2. Performance

One of CARA's mandates is to conduct investigations. During 2021, nine staff members managed 181 requests (compared to 80 requests received in 2020) received with regard to 103 criminal cases. In 2021, the staff worked on 20 types of crimes compared to 13 in the previous year. In 2021, the results of the special investigation measures materialized in 311 reports and 16 findings (compared to 221 reports and 17 findings in 2020). In order to trace proceeds, 3,651 requests for information were drafted and sent to leasing institutions, insurance companies, service providers, telecommunication operators, etc., (compared to 2,450 in 2020), of which 117 were abroad. As a result, 1,416 assets which were proceeds of crimes were identified.

CARA carries out financial investigations. During 2021, eight staff members answered 293 requests for information. With respect to workload, an employee has an average of two working days to respond to a request. These officers requested seizures in respect of 1,963 assets; identified 700 properties; 60 cars; and substantial shares in five commercial enterprises.

¹⁰³ Law no. 48 on the Criminal Asset Recovery Agency of 30 March 2017, https://www.legis.md/cautare/getResults?doc_id=105676&lang=ro.

¹⁰⁴ Article 2, paragraph (2) of the Law on the Criminal Asset Recovery Agency.

The three staff members of the IT analytics department received 229 requests during 2021 (71 more than in 2020). The staff drafted 352 analytical notes on 138 cases and extracted information from databases on assets owned by 1,516 individuals and legal entities.¹⁰⁵ The workload of the three staff members appears high. Since the numbers are increasing compared to 2020, an evaluation of the staffing numbers and needs should be a matter of priority.

In 2021, the eight staff members of CARA's evaluation, management and disposal department evaluated 1,237 alleged proceeds of crime and drafted 671 consultative notes on determining the market value of real estate.

Although the entire amount of court-ordered seizures represents MDL 5.6 billion / EUR 287 million (of which MDL 4 billion / EUR 205 million is within the Bank Fraud case), less than 1% of this amount reached the state budget. Some of the seizures were cancelled by prosecutors during criminal investigation or by judges during court proceedings. Assets have been sold, but CARA had to return the money to the individual after the criminal investigation was discontinued. Although mandated to ensure the capitalization procedure, during its five years of operation, CARA managed to sell only two cars. In 2021, CARA sold a car seized in a case related to the Bank Fraud for MDL 390,000 / EUR 20,000. Also, as of early 2022, sales with respect to 324 seized goods were unsuccessful due to a lack of buyers.¹⁰⁶

In June 2022, a draft law was adopted by the Government which allows CARA to exceptionally dispose of those assets the value of which decreases by more than 10% per year. This is done to avoid that the value of goods diminishes in time due to the extensive examination of court cases. Thus, CARA has the mandate to ask the prosecutor for permission to sell such seized assets.

Currently, according to CARA, interaction with national authorities is good. CARA has access to more than 20 national registers and databases. With banking/financial institutions, there is an electronic exchange of data. Internationally, CARA has access to over 30 databases and contact points on platforms such as CARIN, SIENA, EUROPOL and INTERPOL. In order to identify the assets of suspects and accused persons abroad, it initiated international cooperation with several jurisdictions through the SIENA networks of EUROPOL, CARIN, and the networks of the International Police Cooperation Directorate of the Ministry of Interior. Requests regarding the Bank Fraud were directed to more than two dozen of countries¹⁰⁷. As a result, 14 assets have been identified abroad in a total amount of MDL 121 million / EUR 6 million, which CARA seized. Thus, the total value of the 929 assets which the Agency seized in the cases stemming from the Bank Fraud constitutes MDL 3 billion / EUR 156 million.¹⁰⁸

Cooperation with some jurisdictions, such as Romania, Ukraine, Belgium and France, is good. In respect of other countries, it has improved, though there are notable outliers (e.g. the Russian Federation and the UAE).

CARA has supported APO in the process of creating a common investigation team with the law enforcement authorities of Latvia, particularly with CARA's Latvian counterpart. This positive experience is to be further used.

¹⁰⁵ The department also analysed the turnover of domestic and foreign companies involved in the bank fraud and followed 167 transactions of 73 companies; analysed the flow of money stolen from BEM – 480 financial transactions in 15 bank accounts; analysed 860 transactions including requests through international cooperation channels and FIU in 12 bank accounts; transcribed phone conversations following three requests in order to identify the beneficial owner and registered 2,413 assets in the Registry of confiscated assets.

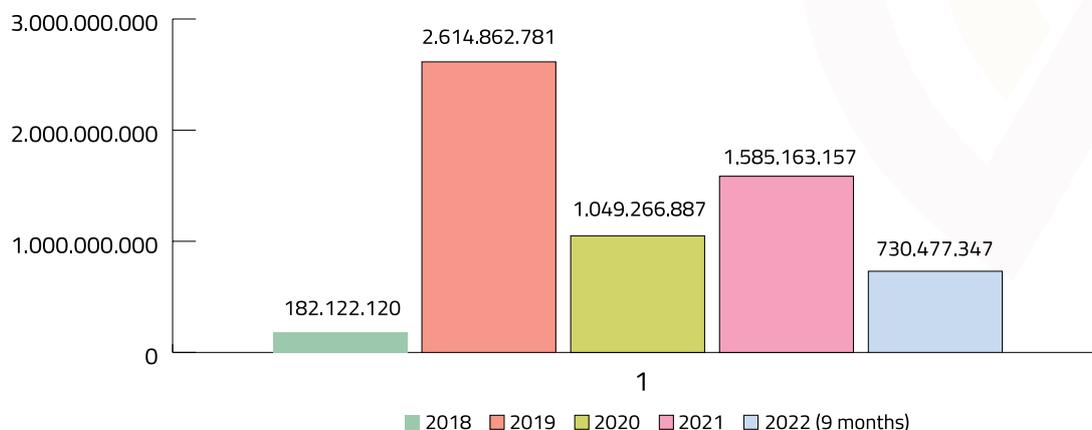
¹⁰⁶ *Seizures of billions vs confiscations of less than 1%. How we found out, for five months, how much money (doesn't) reach the state budget, after the seizures announced by CARA*, Ziarul de Garda, 6 May 2022, www.zdg.md/stiri/sechestre-de-miliarde-vs-confiscari-de-sub-1-cum-am-aflat-timp-de-cinci-luni-cati-bani-nu-ajung-in-bugetul-de-stat-dupa-sechestrele-anuntate-de-CARA/?fbclid=IwAR0_kaW6LAQ-EttMHSwOnEle3x8Eg_z_SOeSOltFYTqrsOs2IK0CqApxrZc.

¹⁰⁷ Romania, Ukraine, Russian Federation, Israel, Austria, France, USA, United Kingdom, Bulgaria, Georgia, Hong Kong, Czech Republic, Poland, Germany, Switzerland, Netherlands, Lithuania, Latvia, Serbia, Montenegro, Luxembourg, Cyprus, New Zealand.

¹⁰⁸ *Sergiu Carapunarli, head of CARA: I assure you that great efforts are being made to complete the investigation and return the embezzled money*, Tribuna.md, 23 August 2021, tribuna.md/2021/08/23/interviu-sergiu-carapunarli-seful-CARA-va-asig-ur-ca-se-depun-eforturi-mari-ca-sa-finalizam-ancheta-si-sa-returnam-banii-delapidati/.

The numbers below indicate that most of the seizures took place in 2019, more than MDL 2.6 billion / EUR 133 million. In 2020, the amount was 60% less, but increased in 2021.

Figure 5. Volume of seizures applied by CARA (in MDL)



Source: CARA annual reports

The recovery procedure in the Bank Fraud cases of approximately EUR 4.5 million¹⁰⁹ is on hold in respect of assets identified in Romania, Georgia, Bulgaria, France, Greece, Switzerland and Russian Federation because the cases are still pending.

The process of recovering the criminal assets is considered completed once the court issues the confiscation decision. The final step in the process of recovering or selling the confiscated objects is performed by the bailiffs and the State Fiscal Service. However, there are circumstances when after the final decision has been issued, there is a need to continue the process of identification of proceeds. At present, CARA is not allowed to conduct such investigations.

The Mechanism for Recovering Money from the Bank Fraud

In 2018, the PGO, APO and NAC co-drafted the Strategy of Recovery of Stolen Assets, in which it was stated that no assets related to the Bank Fraud had yet been recovered. Civil society raised serious questions about the real objective of the document and further criticized the mechanism for distracting public opinion from the real beneficiaries.¹¹⁰

On 18 May 2021, the PGO, together with the NAC, State Fiscal Service and FIU, approved the Mechanism for Recovering Money from the Bank Fraud¹¹¹. The former strategy was considered inefficient. The new Mechanism provides for 24 actions and 46 sub-actions divided under objectives as follows:

- Management and disposal of seized goods in the criminal cases under investigation;
- Identification, seizure, management and disposal of other proceeds in the country and abroad;
- Planning and coordinating activities of the involved institutions;
- Identifying proceeds to be traced in civil proceedings;
- Communication;
- Improving the current legislative framework.

¹⁰⁹ *Anti-Corruption Reforms in Moldova. Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan*, OECD, 2022, <https://www.oecd.org/corruption/acn/anti-corruption-reforms-in-moldova-9bb0367e-en.htm>.

¹¹⁰ *Recovery strategy or persuasion strategy?* Centre for Policies and Reforms, 18 June 2018, <https://watch.cpr.md/strategie-de-recuperare-sau-strategie-de-convingere/>.

¹¹¹ Reference to it is made in the Note on the degree of enforcement of the actions/sub-actions provided by the mechanism of recovery of financial means stolen from the banking system (period 1 January 2021 – 19 August 2021), <http://procuratura.md/file/NOTA%20mecanism%20de%20recuperare%20parlament.pdf>.

The Mechanism includes a special chapter dedicated to the communication of results to the public, providing information on the investigations while maintaining required confidentiality.

The results of the implementation of the Mechanism are reported every four months to the PG, who in his/her turn, is obliged to make such reports public. The logistical and financial needs for the operation of the Mechanism were not foreseen; there is a need for interpreters, analysts, office supplies, etc.¹¹²

The National Program for Asset Recovery for 2022-2027

The representatives of several state institutions, national and international experts are currently working on the draft National Program for Asset Recovery for 2022-2027, to be approved by Parliament by the end of the year. The goal of the policy document is to accelerate proceeds recovery, including money from the Bank Fraud and other high-profile cases. The main objectives of the program are to strengthen the system by making changes to legislation and creating the recovery mechanism, including the asset repatriation mechanism.

The National Common Registry of Preserved Proceeds

Currently, CARA has an electronic registry to keep records of criminal assets derived from cases where the Agency is involved. The prosecutors can access it, but data are incomplete. CARA is also connected to the Integrated Case Management System of the courts¹¹³, but court decisions are not properly published and uploaded into the system¹¹⁴. Thus, there is a lack of complete data in this respect.

In 2020, the Government adopted a decision on the Register of seized criminal assets¹¹⁵. The IT registry is to be administered by CARA, interoperable with electronic programs of courts and the prosecution, with data also to be provided by bailiffs and the State Fiscal Service. The use of this database should increase the level of security of information and the integrity of data. It will also ensure the history of amendments to the information with respect to annulled seizures, and overall increase the efficiency of CARA in its recovery processes and in access to a wide variety of relevant data.

3.3. Main challenges

In 2021, Parliament issued a negative report on the activity of NAC, inter alia, due to lack of progress in recovering the Bank Fraud proceeds¹¹⁶. In respect of CARA, the Parliament found that the data provided to the legislature did not match the annual reports of NAC. It also found that CARA does not keep information on the amount of money which entered the state budget following final court decisions. The Parliament also concluded that while the function of putting in practice final confiscation decisions issued by courts belongs now to other entities, CARA should be continuously and immediately informed regarding these processes.

CARA has no medium- and long-term analysis or vision of its needs, areas for potential improvement or priorities. This, however, can be accomplished through the National Program for Asset Recovery.

¹¹² Informative note for the first eight months of 2021 on the degree of implementing the actions provided in the mechanism was made public, PGO, <http://procuratura.md/file/NOTA%20mecanism%20de%20recuperare%20parlament.pdf>.

¹¹³ The Integrated Case Management System (ICMS) is a multifunctional system used in all courts in Moldova. It was designed to improve the courts' efficiency, transparency, and public access through automation and tracking of a case life cycle from initial filing to disposition and appeal. It facilitates efficient and reliable collection, organization, distribution, and retrieval of significant amounts of case-specific data.

¹¹⁴ "Transparency of the Judiciary versus Data Protection" – An Analysis on the Publication of Court Decisions in the Republic of Moldova, Legal Resources Centre from Moldova, 2020, <https://crjm.org/en/transparency-of-the-judiciary-versus-data-protection-an-analysis-on-the-publication-of-court-decisions-in-the-republic-of-moldova/>.

¹¹⁵ Technical concept of the automated information system "Register of seized criminal assets", Government Decision no. 34 of 22 January 2020, https://www.legis.md/cautare/getResults?doc_id=120391&lang=ro.

¹¹⁶ Evaluation Report of the Activity of the National Anti-corruption Centre for 2016-2021, Parliament, 2021, <https://www.parlament.md/LegislationDocument.aspx?Id=876fdabb-8f1f-4b0e-8048-7c77132c9674>.

In principle, CARA should have the entire recovery mechanism within its mandate and should be independent. However, before that takes place execution of its current responsibilities should be strengthened, so it can demonstrate its value and functionality. In the longer term, the end-to-end process of asset recovery needs to be reviewed; such review should include but not be limited to CARA.

A 2020 Freedom House and Corruption Analysis and Prevention Centre (CAPC) report on the transposition of United Nations Convention Against Corruption (UNCAC) norms onto national legislation and practices of the Republic of Moldova¹¹⁷ indicated that there is no statistical data concerning the number of requests from other states for legal assistance in recovering assets located in Moldova and vice-versa.

An important practical challenges for CARA is understaffing and massive staff turnover due to insufficient remuneration. Clearly, there is a need for better incentives to attract qualified, motivated specialists, including from the finance/banking sector.

Interviewees stated that another challenge that the institution faces is the lack of updated information, training and skills in such areas as commercial enterprise evaluation and administration; evaluation, administration and capitalization of cryptocurrency; the market(s) for real estate; management of precious metals and stones; and repatriation of proceeds.

Other challenges point to the reluctance of prosecution and courts to freeze assets. CARA needs lawyers to represent state interests in civil proceedings on recovering proceeds. Also, CARA needs to be able to employ private law firms to help recover assets in other states. Other issues include the impossibility for CARA to repatriate foreign currencies, both in cash and in bank accounts, since the bank which services the State Treasury does not operate with them; the lack of uniform case law in applying legal provisions related to the capitalization of frozen proceeds; no aggregate reports on recovered assets, since the confiscation process itself is being handled by APO¹¹⁸; and no unified and well-structured statistical overview, which might also be made public.

Representatives of civil society consider that asset recovery should have a paramount role in fighting corruption and organized crime in the Republic of Moldova. Till date, no institution acts as champion in this area; limited and uncoordinated actions are taken by several institutions.¹¹⁹

¹¹⁷ *Measures for corruption prevention and asset recovery in the Republic of Moldova. Alternative report on the implementation of chapters II and V of the United Nations Convention Against Corruption*, Freedom House and Corruption Analysis and Prevention Center, 2020, https://freedomhouse.org/sites/default/files/2020-02/Judicial_Integrity_UNCAC_Corruption_Prevention_Moldova_report_ENGLISH.pdf.

¹¹⁸ *Sanctions as tools for asset recovery*, Civil Forum for Asset Recovery, 2020, https://cifar.eu/wp-content/uploads/2020/12/Ci-FAR_Sanctions-as-a-tool-for-asset-recovery_Moldova.pdf.

¹¹⁹ *Anti-Corruption Reforms in Moldova. Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan*, OECD, 2022, <https://www.oecd.org/corruption/acn/anti-corruption-reforms-in-moldova-9bb0367e-en.htm>.

3.4. Recommendations

1. Parliament should introduce by law the mandate for CARA to carry out financial investigations during court examination and post-sentence. (6 months)
2. Parliament should provide attractive remuneration for CARA staff (18 months).
3. CARA is to remain under NAC for up to two years, subject to an independent assessment of its performance. Thereafter, pending positive evaluation, the institution should become independent from NAC and should have the complete mandate to handle asset recovery in all high-level criminal investigations. (24 months)
4. CARA should explore additional mechanisms to help recover stolen assets abroad, including through the hiring of foreign law firms and private consultants on an as needed basis. (immediate and continuous)
5. CARA should identify its needs for capacity building. (6 months)
6. Development partners should support CARA's capacity building efforts. (12 months)
7. NAC and CARA should request sufficient financial resources to be able to employ private law firms to help recover assets in other states. The Parliament should normally approve such a request. (12 months)
8. Courts should immediately inform CARA on final decisions on confiscation. (12 months and continuously thereafter)

4. National Integrity Authority (NIA)

4.1. Functional mandate

The National Integrity Authority (NIA) is an independent public institution that ensures integrity in the exercise of the public office or public dignity function and the prevention of corruption by verifying personal wealth and related interests and their sources, and observance of the legal regime with respect to conflicts of interest, incompatibilities¹²⁰, and other applicable restrictions and limitations. It was created in 2011 as the National Integrity Commission (NIC), and was reorganized in 2016¹²¹ into the National Integrity Authority following amendments to the Law on the National Integrity Authority, Law on Declaring Assets and Personal Interests and the Law on Integrity.

NIA has the following functions:

- exercising verification of wealth and related personal interests and their sources, as necessary, and the legal regime of conflicts of interest, incompatibilities, and applicable restrictions and limitations;
- finding and sanctioning violations of the legal regime of personal property and interests, conflicts of interest, incompatibilities, restrictions and limitations;
- ensuring the good organization of NIA and the administration of the activity of promoting the integrity of the subjects of asset declaration;
- other functions established by law.

In 2021, the Law on the National Integrity Authority and the Law on the Declaration of Property and Personal Interests was amended¹²². The bill provides for the revision of some of the core elements of NIA's work, such as the strengthening of the mechanism for verification of property and interests and includes the following improvements:

- extended verification to cover the family members, parents/parents-in-law, adult children and dependents of the subjects of verification;
- increased the value of the services that must be declared from six to ten national average salaries.
- determined that declared property must be considered at its real value at the moment of purchase;
- added obligation to declare virtual assets (cryptocurrency);
- reversed burden of proof. Subjects of verification or their relatives/donors carry the onus of proof with respect to doubts as to their declared assets.

According to Article 27 paragraph 3 of the Law No. 132/2016, at least 40% of the verification of the declarations of assets and personal interests carried out during a calendar year shall refer to holders of positions of public dignity, which will be randomly selected for ex-officio control.

¹²⁰ According to art. 16 of the Law no. 133 on Asset Declaration and Personal Interests, the subject of the declaration is in incompatibility if, in addition to the public function or public dignity, he/she simultaneously holds/exercises another function, quality or activity, a fact which is prohibited by the Constitution of the Republic of Moldova and/or by other legislative acts.

¹²¹ Given NIC's poor performance, in 2013 work on amendments to the law was started and finalized in 2014. However, the government took its time with the reforms due to political turmoil, but also lack of will. The subject amendments entered into force only in 2016; from 2014-2016, the activity of NIA was effectively paralyzed.

¹²² Law no. 130 on amendment of Law of certain laws of 7 October 2021, https://www.legis.md/cautare/getResults?doc_id=128365&lang=ro.

NIA oversight is conducted by the Integrity Council.¹²³

NIA is responsible for ascertaining unjustified wealth and to make requests for confiscation. It does not investigate the crime of illicit enrichment. This action is for law enforcement bodies; the responsibilities of the NIA lie in the administrative and civil fields. Consequently, in cases of unjustified wealth of any of the declarants, the NIA can ask the court to confiscate the unjustified wealth through civil proceedings¹²⁴.

4.2. Performance

According to Law no. 180 of 19 December 2011¹²⁵, the NIC was established aiming to implement the verification and control of declarations¹²⁶. NIC was a collegial entity consisting of five members, appointed by parliament for a five-year mandate based on political criteria: three candidates by the parliamentary majority, one candidate by the parliamentary opposition and one candidate by civil society representatives. Thus, the composition of NIC implied high risks of political influence.

The reorganisation of NIC into NIA in 2016 did not lead to immediate positive outcomes¹²⁷. At least partly confrontational or uncooperative relations developed between NIA and its oversight body, the Integrity Council (IC), as well as between the President Rodica Antoci and Vice-President Lilian Chisca of NIA. As a result, the adoption of several important decisions was delayed.

NIC had the mandate to ascertain conflicts of interests, but only NAC could apply sanctions. The then three-month statute of limitation for applying sanctions almost reduced to zero NIC efforts in ascertaining violations. Therefore, few cases were successful in courts. The main issues lied in the conflict of interest area regarded the employment of relatives and in steering contracts to companies in which declarants had an interest.

The first seven integrity inspectors were employed only in 2018. In 2020, although 15 new inspector positions were added, only five persons were employed. In 2021, 10 new positions were added and 13 inspectors were employed. As of June 2022, 25 integrity inspectors are employed out of 43 in the staffing table.

The salary of the leadership of the institution amounts to approximately EUR 1,500 monthly. However, there is an important discrepancy between the leadership and a head of department (EUR 1,000), integrity inspectors (EUR 700) and specialists (EUR 500). One of the reasons for the poor qualifications and performance of integrity inspectors may well be the lack of attractive remuneration.

¹²³ It consists of seven members, selected or appointed by the Parliament, the Government, the SCM, the SCP, the Congress of Local Authorities of Moldova and the Ministry of Justice. It organizes the competition for the position of President of NIA; proposes the appointment to the President, can revoke and suspend the president and deputy president of NIA; approves the strategy, the activity, the organizational structure, the internal regulations and the activity report of NIA; and ascertains the grounds for dismissal of integrity inspectors.

¹²⁴ *Anti-Corruption Reforms in Moldova: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan*, OECD, 2022, https://www.oecd-ilibrary.org/governance/anti-corruption-reforms-in-moldova_9bb0367e-en.

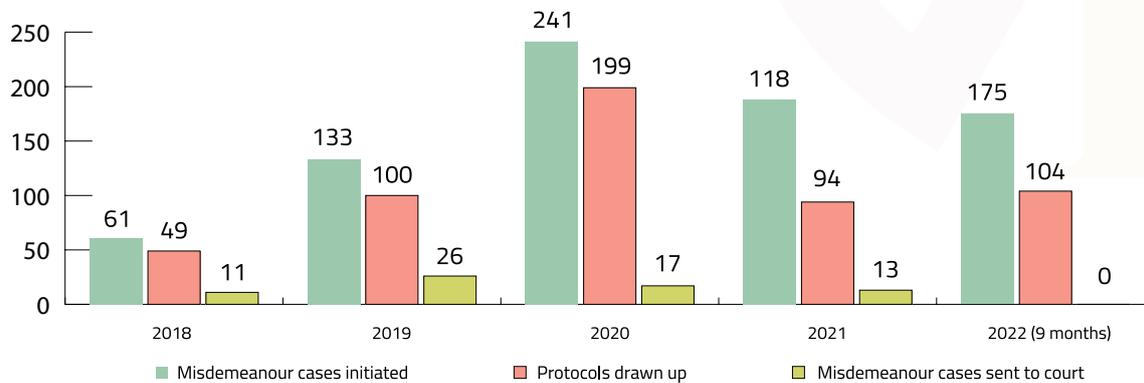
¹²⁵ Law no. 180 on the National Integrity Commission of 19 December 2011 was abrogated by Law no. 132 on the National Integrity Authority of 17 June 2016.

¹²⁶ NIC had the following mandate: to verify the asset declarations; to determine and report whether there are significant discrepancies between the assets and property gained during official position that cannot be justified; to detect and report violations of legal provisions regarding conflicts of interest and incompatibility; to publish all the declarations on its webpage and to ensure their permanent accessibility; etc.

¹²⁷ *Analysis of the legislative framework, procedures, organization and effectiveness of the National Integrity Authority of the Republic of Moldova*, Council of Europe, 2021, rm.coe.int/eccd-aac-ml-d-tp4-effectiveness-of-nia-eng-/1680a36414.

Following the initiation of misdemeanour proceedings based on the Contravention Code¹²⁸, the number of misdemeanour proceedings initiated by integrity inspectors doubled during 2018-2019 and almost doubled again in 2020. However, in 2021, the number decreased by half. Compared to the number of initiated misdemeanours, the number of cases sent to court decreased in 2020 and increased slightly in 2021. During the first nine months of 2022, 104 violations were registered.

Figure 6. Number of misdemeanours initiated by integrity inspectors, initiated findings and number of cases sent to court



Source: NIA annual reports

According to a 2022 LCRM study¹²⁹, between 1 July 2018 and 1 March 2022, the SCJ resolved 31 cases regarding integrity (12 refer to incompatibilities, 19 to conflicts of interest, none to non-declaration of wealth and personal interests). No case regarding the failure to declare assets reached the SCJ. In 18 cases, judges rejected the requests to cancel NIA findings, and in 13 cases, NIA cases were rejected. The reasons for the rejection were the validity of the NIA findings or violations of the administrative procedures for issuing them.

Many of the court decisions could not be enforced due to the expiry of the mandate of subjects (especially mayors and local councillors). Therefore, the proceedings on misdemeanours had to be discontinued. The amount of fines more than doubled in 2019 as compared with 2018, and reached its highest level in 2020 (MDL 456,500 / EUR 23,400). In 2021, the number decreased by half compared with the previous year. During six months of 2022, the amount of fines was higher than the sum registered for all of 2021 (MDL 276,000 / EUR 14,153).

Since 2018, NIA has been restructured. A new department of integrity inspectors was set-up and charged with the verification of asset declarations. New tools were introduced, allowing for the submission of asset declarations online and the possibility of accessing asset declarations through the Declarations Portal of the NIA.

In its second Phase IV compliance report, from 25 September 2020, the Group of States against Corruption (GRECO) found that the recommendation regarding the NIA on ensuring a significantly more independent and effective oversight by the National Integrity Authority of compliance by members of Parliament, judges and prosecutors with the rules on conflicts of interest, incompatibilities, statements of personal

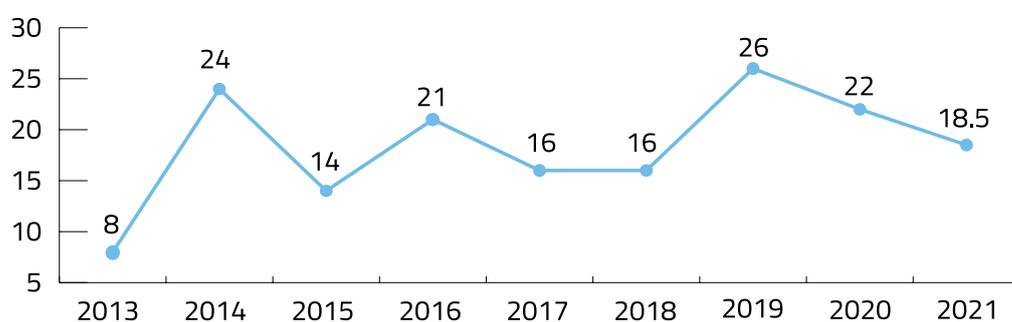
¹²⁸ Article 330² (Infringement of the rules of declaration of assets and personal interests); Article 313² (Failure to declare or resolve a conflict of interest); Article 313⁴ (Violation of the legal regime of incompatibilities and limitations applicable to public office or function of public dignity); Article 313⁵ (Failure to take measures regarding the execution of the provisions of the Law on the Declaration of Assets and Personal Interests); Article 313⁶ (Violation of the legal regime of restrictions and limitations in connection with the termination of the mandate, of the labour relations or service and migration to the private sector of public officials (pantouflage/revolving doors); Article 319¹ (Impeding the activity of the NIA).

¹²⁹ Findings of the National Integrity Authority and the judicial practice, Legal Resources Centre from Moldova, 2022, <https://crjm.org/en/acts-national-integrity-authority-judicial-practice/>.

interests and statements of income and property had been only partly implemented¹³⁰. Despite noticeable improvements, the report recommended that the overall effectiveness of the NIA should be reassessed in due course. NIA's difficulties in finding applicants with a high level of professionalism and in providing requisite training for integrity inspectors were noted, complicated by a moratorium on employment in the public sector (freezing the employment), the failure of applicants to pass the polygraph test (final stage), the unattractive remuneration for such positions (following salary reductions), etc. Last, GRECO concluded that more resolute measures are required to make NIA more effective and efficient, while respecting judicial independence.

A controversial mechanism was introduced in 2017 in Article 31¹ of Law no. 82 on Integrity. Upon the request of the heads of public entities (in the case of competitive employment procedures) or of individuals (who intend to apply for eligible public positions), NIA issues integrity certificates. Such documents can contain both/either positive and/or negative findings. Negatively, they can indicate unjustified wealth and conflicts of interest findings by NIA that have remained in force for the past three years, and existing interdictions to hold a public office, or bars to occupancy of public positions as imposed by courts. A positive certificate can often be deliberately misused, since key information is missing. The certificates do not include any information about a criminal record, violations found by NIA which have expired, or court sentences¹³¹. In practice, integrity certificates failed as legitimate filters of integrity, and many candidates with doubtful integrity entered Parliament. Instead, the introduction of integrity certificates created additional workload and distracted the inspectors from the verification of public officials' assets and conflicts of interests. Data indicates that the highest number of integrity certificates was issued in 2018 (1,374), and decreased in 2021 (547).

Figure 7. Number of issued integrity certificates



Source: NIA annual reports

During a pre-electoral period, NIA issued 1,595 integrity certificates¹³² for the potential candidates in parliamentary elections on 24 February 2019. Only six issued certificates contained endorsements.

¹³⁰ The recommendation refers to „Ensuring a significantly more independent and effective control, by the National Integrity Commission, of compliance by members of Parliament, judges and prosecutors with the rules on conflicts of interest, incompatibilities, statements of personal interests and statements of income and property.” Second compliance report, Council of Europe, Group of States against Corruption, 2020, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809fec2b>.

¹³¹ What should we know about integrity certificate?, Legal Resources Centre from Moldova, 2018, <https://old.crim.org/en/en-what-should-we-know-about-integrity-certificate/>.

¹³² NIA Review on issuing the integrity certificates between 13 November 2018 – 24 January 2019, ani.md/ro/node/468.

4.3. Main challenges

Internal standards and case law

The lack of internal methodologies for verification and poor court practice in the burden of proof and standards for justifying questionable wealth are challenges. In particular, NIA had several instances when subjects of declaration presented contracts as justifications for manifestly false prices for obtained assets¹³³. The subject of declaration has invoked the “liberty of the parties to conclude the contract” principle as justification for the questionable prices provided, claiming that the price provided in the contract should be taken as the ultimate piece of evidence. Hence, undervalued assets in asset declarations of judges¹³⁴, prosecutors¹³⁵ and even by the integrity inspectors¹³⁶ is widespread. Regrettably, NIA has accepted such justification, for several reasons, including the lack of a verification and wealth determination methodology that would have allowed it to demonstrate prima facie inconsistency in the declarations and shift the burden of proof to the declarant¹³⁷.

In addition, there is an inconsistency between the value threshold for the verification of persons by integrity inspectors (“substantial difference”)¹³⁸ and by tax inspectors (“significant difference”)¹³⁹. On the State Tax Service’s Webpage, there is no annual report available, thus no information regarding tax deviations committed by the declarants.

NIA has not prioritized verification of declarations of assets and personal interests. Between 2018 and 2021, of the number of completed declarations (2018 - 69,107 declarations; 2020 - 65,806 declarations; 2021 - 65,232 declarations) only 4% were checked in 2020 and 7% in 2021.

Between 2019 and 2021, 1,900 declarations of assets and interests of the prosecutors were verified by integrity inspectors¹⁴⁰. Following a 2022 decision of the Integrity Council to improve the criteria for selection of declarations to be checked, the evaluation of corruption or other risks should become more efficient¹⁴¹. Of the total, integrity inspectors drew up 71 findings of possible violations by the prosecutors, all referring to declarations of assets and personal interests. Almost all the misdemeanour cases sent to the court (36 out of 37 cases) related to the violation of the rules for declaring wealth and personal interests. The total value of the fines applied to the prosecutors was MDL 64,000 / EUR 3,300. For the

¹³³ For example, a Porsche Cayenne was declared to have been purchased for 550 EUR by a Supreme Court of Justice judge when the market value of the car is actually over MDL 860,000 / EUR 44,100.

¹³⁴ *Two judges with luxury houses and suspiciously priced cars will be checked by the Judicial Inspection*, Bizlaw.md, 21 June 2016, www.bizlaw.md/2016/06/21/doi-judecatori-cu-case-de-lux-si-masini-la-preturi-suspecte-vor-fi-verificati-de-inspectia-judiciara.

¹³⁵ “Poor” prosecutors with apartments, houses and tens of thousands of Euros donated by parents and relatives, Anticoruptie.md, 18 June 2021, anticoruptie.md/ro/investigatii/justitie/saracii-procurori-cu-apartamente-case-si-zeci-de-mii-de-euro-donati-de-parinti-si-rude.

¹³⁶ *Undervalued cars of the integrity inspectors*, Ziarul de Garda, 2021, www.zdg.md/investigatii/ancheta/video-masinile-subevaluate-ale-inspectorilor-de-integritate/.

¹³⁷ On 14 July 2016, NIC dismissed the case against a Supreme Court Judge in this regard and notified the NAC of the adopted decision (www.zdg.md/wp-content/uploads/2016/07/Pitic-act-de-constatare.pdf). No public information on the NAC action on this notification. However, on 24 March 2022, NIA adopted a fact-finding document ascertaining a difference between obtained property and income in 2014 of MDL 677,798 / EUR 34,750 (ani.md/ro/file/5181/download?token=sjA_gxO5). The case is pending at the Chisinau Court of Appeal.

¹³⁸ According to the Law on Wealth and Personal Interests, the *substantial difference* is the difference of 20 average monthly salaries per economy between the wealth of the subject of the declaration at the beginning of the verification and at his entry into office/appointment/mandate, taking into account the income obtained and the expenses borne by the subject of the declaration and family members. Currently, the difference in question is about MDL 198,000 / EUR 10,150.

¹³⁹ According to the Fiscal Code, the *significant difference* refers to the record of a difference of more than MDL 300,000 / EUR 15,400 between the estimated taxable income and the taxable income declared. Thus, he/she is subject to indirect estimation methods.

¹⁴⁰ *Monitoring the declarations of incomes and properties by the Prosecutors*, Transparency International–Moldova, 2022, www.transparency.md/wp-content/uploads/2022/05/TI_Moldova_Monitoring_the_declarations_of_incomes_and_properties_by_the_Prosecutors_of_RM.pdf.

¹⁴¹ Decision no. 17 of 5 July 2022 of the Integrity Council on approval the criteria for the selection and verifying the declarations of assets and personal interests, <https://ani.md/sites/default/files/HCI17.PDF>.

same period, NIA sent PGO six notifications regarding allegedly false statements. No major issues have been found in this respect by NIA.

Between 1 July 2018 and 1 March 2022, no case regarding failure to declare assets reached the SCJ¹⁴². The 31 files examined by the SCJ refer to conflicts of interest and incompatibilities. This fact suggests that the examination of files on the wealth of public officials takes a long time or is unduly extended in some cases. NIA files were rejected especially in cases of high-ranking officials. Four out of five such were rejected by courts. In the case of other officials, only nine out of 26 NIA files failed. This suggests that either high-ranking officials had better lawyers, NIA failed to prove wrongdoing, or judges are more lenient toward high-ranking officials. Four NIA cases were annulled for missing the deadline for issuing findings as established in the Administrative Code.

In September 2020, NIA drafted an Institutional Development Strategy¹⁴³. It did not provide any data or references to an evaluation of performance, outcomes or impact of NIA's activity¹⁴⁴. In June 2021, the IC decided to re-draft the institutional strategy of NIA and re-launch the activity of the working group to finalize the document¹⁴⁵. However, the institutional strategy has still not been adopted.

Verification of asset declarations for holders of positions of public dignity

Another challenge in NIA's work has been the lack of a clear strategy to prioritise high level officials and cases with significant discrepancies between the declared and the de facto wealth of the declarants. Instead, most of the cases between 2018-2021 focused on conflicts of interest at the local level. The categories of subjects covered by the findings drawn up by the integrity inspectors are as follows:

Table 12. Categories of subjects covered by NIA findings

Category of subjects of the declaration	Total findings					TOTAL
	2018	2019	2020	2021	2022 (9 months)	
Members of the Parliament (MPs) and former MPs	0	1	5	10	5	21
State secretaries	0	0	1	1	0	2
Prosecutors	0	1	1	5	4	11
Judges (members of SCM) and ex-judges	0	0	1	4	4	9
Mayors and deputy mayors	6	24	54	59	41	184
Heads or deputy heads of territorial unit	0	0	9	7	3	19
Local councilmen	3	15	42	41	25	126
Public servants, including those with special status	13	18	42	31	31	135
Heads or deputy heads of public organizations	7	35	52	53	36	183
Others	0	0	3	5	3	11
TOTAL	29	94	210	216	152	701

Source: NIA annual reports

¹⁴² *Ascertaining documents of the NIA and the related case law*, Legal Resources Center from Moldova, 2022, <https://crjm.org/wp-content/uploads/2022/06/2022-06-23-Acte-ANI-draft.pdf>.

¹⁴³ Institutional Development Strategy of NIA, 2020, [https://cni.md/sites/default/files/Strategia%20ANI%20\(proiect\).pdf](https://cni.md/sites/default/files/Strategia%20ANI%20(proiect).pdf).

¹⁴⁴ *Analysis of the legislative framework, procedures, organization and effectiveness of the National Integrity Authority of the Republic of Moldova*, Council of Europe, 2021, rm.coe.int/eccd-aac-ml-d-tp4-effectiveness-of-nia-eng-/1680a36414.

¹⁴⁵ Decision no. 10 of the Integrity Council of 28 June 2021, cni.md/sites/default/files/HCI%2010%20din%2028.06.2021%20.PDF.

In 2020, integrity inspectors were randomly distributed 1,332 declarations, following which 752 findings were drawn up (of which 400 led to initiation of verification). In 210 cases, NIA found offences. In other words, to extrapolate, 17% of declarants filed questionable or outright false declarations. Similarly, in 2021, the integrity inspectors looked at 1,301 declarations, of which 404 led to verification. Offences were found in 217 cases.¹⁴⁶ This pattern reflects a remarkably high level of questionable integrity among declarants.

Article 2 of Law no. 133 provides that substantial difference is a difference that exceeds 20 average national monthly salaries between assets acquired and the income gained by the subject of the declaration together with his/her family members or his/her cohabitant during his/her mandate or in his/her public function or position of public dignity. The definition of substantial difference rests on comparison between wealth and income and does not take into account unusually large expenses exceeding declared sources of income.

Functioning of “e-Integrity”

In 2018, NIA launched the “e-Integrity” system, which has been subject to continuous development since then. Government Decision No. 228 of 10 April 2020 approved the Regulation on the organization and functioning of the “e-Integrity” automated information system. “E-integrity” refers to a mechanism of automatic analysis of declarations and envisages comparison of data from the asset declarations with data from other state registers/systems. These include the state register of transport, the state register of legal persons, the state register of population, the register of immovable property, the information system of the State Tax Service, etc. However, there are difficulties in determining the value of certain assets and carrying out controls regarding persons with whom public officials have had transactions.¹⁴⁷ Thus, there is a need to develop and integrate tools of statistical analysis in the “e-Integrity system” and use them, along with other methods, for selecting declarations and subsequently verifying them.

Distribution of cases within NIA

Three of the twenty integrity inspectors produced about 30% of the publicly available cases of questionable declarations¹⁴⁸. This discrepancy could suggest that, despite the automated “e-Integrity” system, there are problems with the random distribution of cases within NIA and lack of oversight management tools. These problems were later confirmed by the current management of NIA¹⁴⁹. There was a total lack of oversight, especially in regard to observing reasonable deadlines, since no time frames for examining cases have ever been established, in 2021, integrity inspectors were examining files from 2016. This poor situation is all the more serious given the three-year statute of limitation from the time the declaration has been submitted to NIA. Thus, there is a lack of management tools to verify whether the timelines for examining files are observed and lack of liability mechanisms¹⁵⁰.

Delays in appointment of the NIA leadership

According to Article 9 of Law no. 132 on the National Integrity Authority, NIA is led by a president and assisted by a vice-president. Both of them are appointed by the president of the country upon the proposal of the Integrity Council. The term of office of the president and vice-president is five years, without the possibility of reappointment. On 5 April 2022, the president of the Authority resigned from office, while the mandate of the NIA vice-president expires in December 2022. After seven months since the office of the president became vacant, no competition has been launched. However, on 21 July 2022, the Integrity Council published for public consultations the draft rules on organizing and conducting the competition for NIA president. On 25 October 2022¹⁵¹, the consultation process was extended.

¹⁴⁶ NIA annual report for 2021, 2022, https://ani.md/sites/default/files/Aprobat_CI_RaportulDeActivitate_2021.pdf.

¹⁴⁷ *Analysis of the legislative framework, procedures, organization and effectiveness of the National Integrity Authority of the Republic of Moldova*, Council of Europe, 2021, rm.coe.int/eccd-aac-mld-tp4-effectiveness-of-nia-eng-/1680a36414.

¹⁴⁸ *Findings of the National Integrity Authority and the judicial practice*, Legal Resources Centre from Moldova, 2022, <https://crim.org/2022/06/29/actele-ani-practica-judecatoreasca/>.

¹⁴⁹ Identified deficiencies of the random assignment of cases within the “e-integrity” system were resolved, ani.md/ro/node/256.

¹⁵⁰ Currently, there is no chief integrity inspector with oversight mandate as to complying with time limits, ensuring uniform practice.

¹⁵¹ Press-release regarding the selection process of the NIA’s president, <https://cni.md/ro/node/2671>.

4.4. Recommendations

1. Parliament should abolish the integrity certificates introduced by Article 31¹ of Law no. 82 on integrity in 2018. (6 months)
2. Parliament should strength NIA's mandate with corruption and integrity prevention activities. (12 months)
3. Parliament should provide adequate attractive remuneration for NIA staff. (18 months)
4. NIA and the Integrity Council should develop and approve an institutional development strategy with measurable outcomes and impact. (immediate and continuous)
5. NIA needs to strengthen its internal analytical capacity for analysis of data from official databases and open sources domestically and abroad. (immediate and continuous)
6. NIA should continue efforts towards developing and updating electronic mechanisms for automatic verification and cross checks with official databases. (immediate and continuous)
7. NIA should develop and improve verification capabilities with the aim of reaching the ability to verify in-depth a minimum of 10% of the total number of declarations per year. (immediate and continuous)
8. NIA should better define and improve the methodology on asset verification. (6 months)
9. NIA leadership should drastically improve supervision and oversight of integrity inspectors, including in the implementation of the methodology of Verification of Assets and Personal Interest and on Conflicts of Interest, Incompatibilities, Restrictions and Limitations. (immediate and continuous), and, among others, the establishment of timelines for reviews and proportional actions for underperformance.
10. Annual reports of NIA should be more informative, developed in a manner to support their comparability with previous years. The report should be user-friendly, with its analysis and findings presented in form and substance accessible to the general public. (next annual reports)
11. NIA should keep track of case law on integrity and establish a mechanism for discussing issues of legal interpretation of integrity related provisions with the Supreme Court of Justice. (immediate and continuous)
12. NIA should cooperate with the National Institute of Justice on training of judges and prosecutors on integrity issues. (immediate and continuous)
13. NIA should develop a strategy and action plan for communication with the public and the mass media, including presentation of its results, information campaigns on the essence of the conflict of interests, incompatibilities, etc. All work products in this regard should be written in language accessible to the general public and designed in user-friendly formats. (immediate and continuous)

5. Financial Intelligence Unit (FIU)

5.1. Functional mandate

The FIU is the national centre for collection and analysis of financial data and an important interface between the financial sector, the liberal professions (lawyers, notaries and bailiffs) and other reporting entities (banks, insurance companies, exchange offices, participants in the capital market) on the one hand and law enforcement bodies on the other. With a view to reducing vulnerability of the banking and non-banking finance sectors to the risk of money laundering (ML) and financing of terrorism (FT), the FIU undertakes analytical processes combined with financial investigations to identify money laundering schemes which are sent for further examination by criminal investigation authorities.¹⁵²

The FIU was created in 2003 under NAC. Gradually the FIU separated from NAC; in 2007, its autonomy was strengthened by Law no. 190 and in 2017 the FIU became independent, following transpositions of EU Directives in this field.¹⁵³ Throughout the period of widespread money laundering, however, the FIU appears to have selected some targets based on political considerations.¹⁵⁴ Nevertheless, substantial financial and human resources have been invested by national authorities and international partners to enhance the capacity of the institution and ensure its operational independence.

In 2012, MONEYVAL¹⁵⁵ evaluated the Republic of Moldova on the conformity of the national system with international standards, including on observance of Financial Action Task Force (FATF) recommendations and EC Directives 2005/60 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and 2006/70 as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis. To address the recommendations, an Action Plan on the Implementation of the National Strategy on Preventing and Fighting Money Laundering and Terrorism Financing for 2013–2017 was adopted. Additionally, the Association Agreement between the EU and Republic of Moldova expressly provided for the transposition of EU directives on the use of the financial system to launder money or finance terrorism. The 2017 draft law comprised both the FATF recommendations and the EU directive.¹⁵⁶

The FIU has, inter alia, the following functions under the law¹⁵⁷:

- receives, records, analyses, processes and refers to the competent bodies information on suspicious ML activities and transactions and TF;
- notifies the relevant law enforcement bodies on suspicions regarding ML, TF or other crimes;
- conducts financial investigations in order to identify the source of suspected ML/TF assets;
- supervises the compliance by the reporting entities with the provisions of the law, including the reporting of suspicious activities and transactions;
- issues decisions to stop the execution of suspicious ML activities;
- ascertains and examines the misdemeanors assigned to it by mandate;
- applies misdemeanors, pecuniary sanctions and other types of sanctions;
- provides, at the request of the criminal investigation body, information regarding the suspicious activities and transactions.

¹⁵² FIU webpage, <http://spscb.gov.md/ro/page/about>.

¹⁵³ Law no. 308 on prevention and fighting money laundering and terrorism financing of 22 December 2017, https://www.legis.md/cautare/getResults?doc_id=133298&lang=ro#.

¹⁵⁴ "The Offshore Republic". Review of factors leading to systemic fraud and money laundering in Moldova's banking, financial and insurance sectors, the Independent Anti-Corruption Advisory Committee, 2022, <https://ccia.md/wp-content/uploads/2022/07/CCIA-Raport-ENG.pdf>.

¹⁵⁵ Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, [www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/RMDV_MER_MONEYVAL\(2012\)28_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/RMDV_MER_MONEYVAL(2012)28_en.pdf).

¹⁵⁶ Annual Report for 2017, FIU, <http://spscb.gov.md/storage/reports/October2019/fyu2UwpDpM7VrjDCaXLI.pdf>.

¹⁵⁷ Law no. 308 on prevention and fighting money laundering and terrorism financing of 22 December 2017.

National public authorities and bodies with supervisory functions of the reporting entities provide FIU with free and online access to information resources, including those containing personal data¹⁵⁸.

5.2. Performance

After 16 years within NAC, starting with 2017, FIU has reconfigured its activities and responsibilities, initiating a vast process of adjusting secondary legislation and strengthening its institutional capacity. Currently, the institution is well-endowed to provide support to law enforcement institutions. The FIU checks various databases and if it identifies suspicions, it reports them.

Upon identification of suspicious transactions, the information is sent to the law enforcement bodies. Unfortunately, data recipient agencies repeatedly have claimed they lack the requisite specialists to assess what they receive. FIU can apply sanctions to the reporting entities, such as banks, for not meeting their legal reporting obligations. In respect of one commercial bank, according to an interviewee, approximately 200 fines were applied. However, in 2017, the fine limit was MDL 2,000 / EUR 100, a negligible amount in no way proportionate to the potential impact of such breaches. Fortunately, from 2020 sanctions have been raised up to EUR 5 million for reporting non-compliance.

At the moment, there are 30 staff positions within FIU, with 21 occupied. If more tasks emerge, including to collaborate more closely with prosecutors or in working groups (e.g., to work on the Asset Recovery Strategy), more staff would be needed.

Before leaving NAC, the salaries were relatively high compared to the national average. The FIU kept the same salaries for those who came from NAC but only half for those applying from outside. In 2021, a new employee was to receive MDL 8,000 / 410 EUR, a salary for which few professionals apply. Therefore, students are being employed (3 of late) and trained.

Table 13. Salaries of the FIU staff

FIU staff	2018	2021	Increase
Director	MDL 17,380 / EUR 890	MDL 33,430 / EUR 1,710	+92%
Head of section	MDL 13,400 / EUR 687	MDL 16,750 / EUR 850 in 2021	+25%
Inspector	MDL 7,620 / EUR 390	MDL 9,530 / EUR 490 in 2021	+25%

Source: information received from FIU

The salaries increased from 2018 to 2021. The main problem is turnover: the high performers and well-experienced employees leave. On 29 September 2022, the Government approved a 120% increase in salaries.¹⁵⁹

According to FIU, national and international cooperation is good¹⁶⁰. The new law provides for the necessary platforms to cooperate with the National Commission on Financial Markets (NCFM), National Bank of Moldova (NBM), NAC, MIA, prosecutors' office, etc.

International bilateral cooperation has improved over time. The FIU has in force bilateral cooperation memoranda with 43 states¹⁶¹.

FIU is mandated to supervise and check conformity of reporting entities with relevant legislation. The main violations found refer to failure to approve or comply with policies and precaution methods as to

¹⁵⁸ *Ibid.*

¹⁵⁹ Government Decision no.671, 29 September 2022, https://www.legis.md/cautare/getResults?doc_id=133497&lang=ro.

¹⁶⁰ FIU actively participates in the working sessions and reunions of MONEYVAL, Conference of the Parties CETS 198, EUROPOL, CARIN, TAIEX, OSCE, EAG, GUAM and also takes part in the cooperation on the platform EGMONT Group.

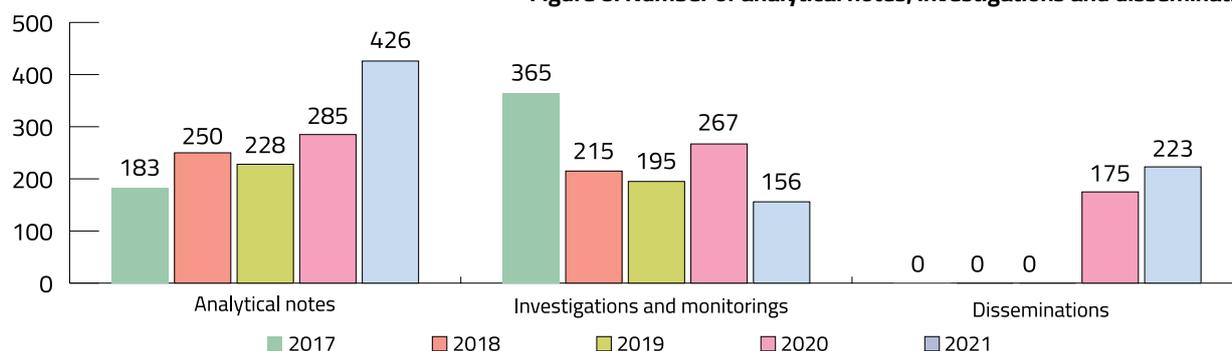
¹⁶¹ For example, from Latvia, at the beginning FIU would not receive information since their legislation would not allow to share it. There have been bilateral sittings and the Latvian counterparts understood the magnitude of the Moldovan request and after operating amendments in the legislation in 2015, the FIU staff states that the international cooperation started to improve.

clients, deficient internal controls, compliance, failure to inform the FIU about cash or transfer transactions exceeding MDL 200,000 / EUR 10,250, and the failure to appoint employees specifically to implement AML/FT requirements. FIU organizes regular meetings with representatives of the reporting entities to inform them about their reporting responsibilities and procedures.

In 2021, FIU carried out 11 control procedures, applied fines in respect of seven entities and orders in respect of four (of MDL 680,900 / EUR 34,910 in total).¹⁶²

Besides operational work, the FIU also carries out analytical work to assist law enforcement, fiscal authorities and supervision bodies, to create financial profiles of commercial bank shareholders, associates in non-banking credit associations, candidates for management positions of reporting entities, and consultative opinions on external loans. Whenever reasonable suspicion on ML is identified, the FIU disseminates the information to law enforcement bodies.

Figure 8. Number of analytical notes, investigations and disseminations



Source: FIU annual reports

5.3. Main challenges

The legal and institutional set-up of the FIU has laid the foundation for an efficient institution. Several interlocutors have spoken highly as to the institutional development and the professionalism of FIU staff. FIU is a good example of a beneficial impact of competent and consistent support from development partners.¹⁶³

5.4. Recommendation

1. FIU needs to remain independent. The current operational formula has proven to be correct and functional.

¹⁶² Annual Report for 2021, FIU, <http://spscb.gov.md/storage/reports/May2022/Pcy15VZfaNXS2hvnJ4pq.pdf>.

¹⁶³ The Republic of Moldova has improved measures to combat money laundering and terrorist financing, demonstrating good progress in the level of compliance with the FATF (Financial Action Task Force) standards, concludes the Council of Europe's anti-money laundering body MONEYVAL in a follow-up report released on 10 June 2022. However, in the field of new technologies, where new international requirements for virtual assets have been introduced, Moldova's rating has been downgraded. MONEYVAL upgrades Moldova's ratings following improvements in measures to prevent money laundering: new report, CoE, 10 June 2022, <https://www.coe.int/en/web/moneyval/-/moneyval-upgrades-moldova-s-ratings-following-improvements-in-measures-to-prevent-money-laundering-new-report>.

Chapter 2. Courts' role in the anti-corruption infrastructure

Courts always play a crucial role in fighting corruption. Judges authorise the most important measures during criminal investigation and ultimately examine and decide cases presented by the prosecution.

Several unfortunate examples of cases of judicial corruption were brought to the public's attention in 2016, revealing that allegedly 16 judges were complicit in money laundering activities of about USD 70 billion in the Russian Laundromat scheme¹⁶⁴. The role of the courts in this conspiracy was significant given the fact that it is the courts that have issued the orders for obviously suspicious transfers of funds. The cases against the judges are still pending. Although the SCM had been aware of the involvement of judges in these cases from 2012, they reportedly did not take action until 2016, long after the damage to the Moldovan banking system had been done.

Several judges involved in such cases were either evaluated "very positive" in their performance reviews by the relevant SCM bodies, promoted to administrative positions in district courts or to Courts of Appeal during 2014-2016.¹⁶⁵ APO did not disclose that it discontinued criminal investigation in respect of these judges.¹⁶⁶ On 27 October 2020, the SCM accepted the request of five of these judges investigated in the "Russian Laundromat" case to have their suspensions from office quashed and to return to work. Subsequently, two other judges were found guilty of knowingly issuing a court decision contrary to law but exempted from criminal liability due to the limitation period; another was acquitted. Eleven cases are pending in court and multiple recusal requests in respect of judges who are examining the cases are being put forward by lawyers, which leads to postponements.¹⁶⁷

As to other allegations of corruption in respect of judges, although criminal investigations have been initiated, only one judge was found guilty of taking bribes ("passive corruption") and sentenced to seven years of imprisonment. Another was found guilty of the same offence in the first instance court but acquitted subsequently by the Supreme Court.¹⁶⁸

Article 307 of the Moldovan Criminal Code on "wilfully rendering a judgment, sentence, decision or ruling in breach of the law" is seen as a mechanism which endangers judicial independence¹⁶⁹. Several judges have been subjected to criminal investigation under this provision, the constitutionality of which was upheld by the Constitutional Court in 2018. That decision stated that a judge can be prosecuted "only on the basis of indisputable evidence that would prove the intention of the judge in issuing a judicial act in breach of the law"¹⁷⁰.

A 2019 Freedom House Report monitoring the selectivity of criminal justice in the Republic of Moldova¹⁷¹ highlighted uneven treatment across similar criminal cases which, according to prosecutors, related to the

¹⁶⁴ Press conference of the head of the APO and the head of the criminal investigation of the NAC of 21 September 2016 (<http://procuratura.md/md/news/1211/1/6755/>).

¹⁶⁵ «Only an empty shell» - *The undelivered promise of an independent judiciary in Moldova*, The International Commission of Jurists, 2019, <https://www.icj.org/wp-content/uploads/2019/03/Moldova-Only-an-empty-shell-Publications-Reports-Mission-reports-2019-ENG.pdf>.

¹⁶⁶ *Report on Monitoring the Selectivity of Criminal Justice*, Freedom House Moldova, 2021, freedomhouse.org/sites/default/files/2021-11/fh-Moldova_Report-Selective-Justice-2021_v2-Eng.pdf.

¹⁶⁷ "Laundromat" judges' files. Some have called for the recusal of the judges, others are demanding compensation from the state, Ziarul de Garda, 27 June 2021, www.zdg.md/stiri/stiri-justitie/dosarele-judecatorilor-din-laundromat-unii-au-cerut-recuzarea-judecatorilor-altii-cer-despagubiri-de-la-stat/.

¹⁶⁸ *Three convicted judges for corruption for the last two years*, Anticoruptie.md, 2016, <https://anticoruptie.md/ro/stiri/trei-judecatori-condamnati-pentru-acte-de-coruptie-in-ultimii-doi-ani>.

¹⁶⁹ «Only an empty shell» - *The undelivered promise of an independent judiciary in Moldova*, International Commission of Jurists, 2019, www.icj.org/wp-content/uploads/2019/03/Moldova-Only-an-empty-shell-Publications-Reports-Mission-reports-2019-ENG.pdf.

¹⁷⁰ Constitutional Court Decision no. 12 of 28 March 2017, available at constcourt.md/ccdocview.php?tip=hotariri&docid=612&l=ro. The press release in English available at constcourt.md/libview.php?l=en&idc=7&id=985&t=/Media/News/Criminal-Liability-of-Judges-Arising-from-a-Wilful-Rendering-of-an-Illegal-Decision-Constitutional.

¹⁷¹ *Report on Monitoring the Selectivity of Criminal Justice*, Freedom House Moldova, 2019 https://freedomhouse.org/sites/default/files/2020-02/Judicial_Integrity_Selective-Criminal_Justice_ENGLISH_FINAL.pdf.

Bank Fraud case. Now fugitive politician and entrepreneur Ilan Shor received preferential treatment from the relevant investigative and court bodies. Delays in court proceedings were also a symptom of selective justice in the Shor case: of the 98 court sessions monitored, 68 were postponed¹⁷². The assessment indicated that selective justice resulted from undue influence and cooperation between politicians and judges, producing either unreasonably favourable or unfavourable postures towards individuals with certain political affiliations, depending on their closeness to or distance from the politicians in power, especially those overseeing the judiciary.

A subsequent 2021 Freedom House Report on the same topic was conducted in 2021¹⁷³. It revealed several criminal cases with similar characteristics but with divergent procedural approaches, notably differing and inconsistent assessments of NIA's fact-finding documents when starting criminal prosecution for illicit enrichment; different judicial outcomes in similar cases with identical criminal typologies, etc. Fifty-six percent of all monitored court hearings were postponed, leading to extensions. The monitoring also confirmed clear favouritism: in one high profile example of a complex set of criminal allegations with respect to defendants in the Platon group cases likely to have a positive outcome¹⁷⁴ were carried out quickly, despite the multitude of participants in the case and the change of judges.

A recent LCRM report on the application of criminal sanctions in the Republic of Moldova¹⁷⁵ found that courts in Moldova appear to be cognizant of the importance of the specific circumstances of the defendant in the sentencing but apply a formalistic approach with respect to the criteria for individualisation. Although courts do pay attention to the issue of proportionality in sentencing, the mechanisms provided for in the legislation to ensure the balance between the impact of the deed and the perpetrator, on the one hand, and the liability and punishment merited, on the other, do not seem to have the desired effect¹⁷⁶. This tendency is observed in the reasoning of decisions in general, and also in the reasoning of the criteria for individualisation, especially in regard to proportionality, and mitigating or aggravating circumstances. The SCJ and first instance courts outside Chisinau seem to be the most problematic in this regard.

On the matter of sanctions applied in corruption cases of over 400¹⁷⁷ analysed judgments issued by the SCJ between January 2017 and December 2020, a 2022 LRCM report¹⁷⁸ established that in over 90% of corruption cases the subjects were engaged in or the acts themselves were of petty corruption. Seven percent of the cases relate to subjects or cases of grand corruption. Justice in corruption cases has been served within an average of 3.5 years. Every second examined case was re-examined at least once.

From the total sanctions imposed by judges, eight out of ten convicted did not spend a day in jail. Fifty-five percent of district court judgements are quashed. A further 48% of judgments in such cases are reversed

¹⁷² In cases involving opposition subjects that seemed likely to be convicted, court proceedings moved with remarkable alacrity, while those with a chance of being acquitted were subject to extensive delays. This phenomenon was reversed in cases involving subjects close to the ruling party.

¹⁷³ *Report on Monitoring the Selectivity of Criminal Justice*, Freedom House Moldova, 2021, https://freedomhouse.org/sites/default/files/2021-11/fh-Moldova_Report-Selective-Justice-2021_v2-Eng.pdf.

¹⁷⁴ Veaceslav Platon, who gained ownership in various Moldovan banks and insurance companies in the post-Soviet economy and maintained strong ties to Russian bankers involved in money laundering <https://ccia.md/wp-content/uploads/2022/07/CCIA-Raport-ENG.pdf>.

¹⁷⁵ *Report on the application of criminal sanctions in the Republic of Moldova*, Legal Resources Centre from Moldova, 2022, crjm.org/wp-content/uploads/2022/05/Report-on-application-of-criminal-sanctions-in-RM.pdf.

¹⁷⁶ In the paper "*From Judgments to Justice—How Can We Achieve Better Judicial Reasoning in Moldova?*" drafted by the Legal Resources Centre from Moldova, the authors identified the main causes of adopting poorly reasoned judgments, and analysed the legal shortcomings and practical constraints that weaken the efforts of the Moldovan judiciary to ensure proper quality of reasoning. These deficiencies stem from inconsistent judicial practice and the limited impact of the efforts to standardize judicial practice; judges' workload and its uneven distribution; flawed, superficial reasoning in court judgments; pre-established deficient behaviour of current judges inculcated in new judges; shortage of personnel that assists judges; and compliance with statutory time limitations, often to the detriment of other requirements, including those concerning the reasoning of judgments. The paper is available at crjm.org/wp-content/uploads/2021/11/2021-22-10-De-la-hotarari-judecatoresti-la-justitie_2021-RO_FINAL.pdf.

¹⁷⁷ Represented 95% of the total number of judgements publicly available on the website of the SCJ at that time.

¹⁷⁸ *Judgments and sanctions applied in corruption cases – how uniform is the legal practice?*, Legal Resources Centre from Moldova, 2022, https://old.crjm.org/wp-content/uploads/2022/01/2022-01-25-studiu-sanctiuni-coruptie-versiunea_pre-machetata-site.pdf.

by the Court of Appeals. The rate of acquittals in corruption cases is at least four times higher than in other criminal cases.

The publication of court decisions provides insight on how a judge applies the law. In 2020¹⁷⁹, based on analysis of 1,340 judicial decisions adopted from 1 January 2018 to 31 March 2019, LCRM found that the sealing of court decisions in the Republic of Moldova is inconsistent. Such inconsistencies were found across 55% of corruption cases. In 149 decisions related to corruption cases (28% of the total of 530 decisions analysed), the judges (with the exception of the SCJ) abused the practice in such areas as naming the perpetrators or instigators of a crime. In 118 decisions (22%), the name of the judge, prosecutor, police officer, mediator, bailiff, notary or lawyer were undisclosed. There are several cases in which the amount of the bribe was sealed in court decisions in high profile cases. These examples show the excessive and improper concealing from public view of key elements of such court decisions, which reduces the impact of corruption prevention through well-reasoned court judgments, deterrence and transparency to civil society.

There have been cases in which courts of first instance and at the appeal level, including in high profile criminal cases, have examined files completely hidden from public view. For example, the case of former Prime-Minister Vladimir Filat, who was convicted of passive corruption and influence-peddling, was entirely examined in closed hearings, despite the defendant's request for an open trial. Two other cases related to the Bank Fraud, were reportedly examined entirely behind closed doors. Although courts can exclude the public from all or part of a trial, this is to be done only under exceptional circumstances, strictly justified on a case-by-case basis and be subject to ongoing judicial supervision and review. The International Commission of Jurists has expressed concern at the use of closed hearings particularly in criminal cases in which there is a public interest.¹⁸⁰

Between September 2019 and August 2022, the Constitutional Court registered filings of eight claims of unconstitutionality referring to illicit enrichment¹⁸¹, one submitted in September 2019 and seven between April and August 2022. Other cases are pending¹⁸². The provision of Article 12¹ para. (3) of the Civil Procedure Code allows for the examination of a civil case up to the final stage of the case, while Article 7 para. (3²) of the CPC suspends the examination of the criminal case at any stage and continues after the adoption of a solution by the Constitutional Court. The postponement of the examination of criminal cases (not only those for acts of corruption) can be avoided if the rule in the CPC is formulated similarly to the one in the Civil Procedure Code. In October 2022, the ODIHR/OSCE issued a Joint amicus curiae with the Venice Commission¹⁸³ stating that the imposition of criminal liability in illicit enrichment cases "...would a priori not be contrary to the discretion of the state in determining the scope of their criminal policy". Also, the defendant should be able to rebut any prima facie case established against them by simply adducing evidence sufficient to raise a doubt regarding the submissions of the prosecution with respect to any of the constitutive elements of the criminal offence.

The United Nations Development Program (UNDP) in the Republic of Moldova carried out a comprehensive assessment of the effectiveness and impact of the implementation of the National Integrity and

¹⁷⁹ *Transparency of the Judiciary versus Data Protection. An Analysis on the Publication of Court Decisions in the Republic of Moldova*, Legal Resource Centre from Moldova, 2020, <https://crim.org/en/transparency-of-the-judiciary-versus-data-protection-an-analysis-on-the-publication-of-court-decisions-in-the-republic-of-moldova/>.

¹⁸⁰ «Only an empty shell» - *The undelivered promise of an independent judiciary in Moldova*, International Commission of Jurists, 2019, <https://www.icj.org/wp-content/uploads/2019/03/Moldova-Only-an-empty-shell-Publications-Reports-Mission-reports-2019-ENG.pdf>.

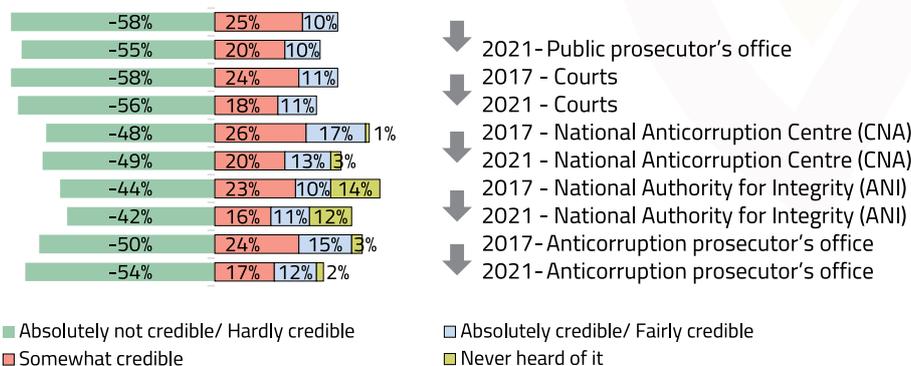
¹⁸¹ In one of the few criminal cases for illicit enrichment that is being examined in court, the delay in examining the case and adopting a court decision is a phenomenon (the case of judge Oleg Melniciuc, currently in office, convicted in the first instance for illicit enrichment). The first instance court examined the case in 24 hearings, lasting 613 days or one year and eight months (30 December 2019, first hearing – 3 September 2021, the sentence was issued. Three hearings were postponed because the judge was on illness leave, three due to the prosecutor and three postponements for deliberation). In the Court of Appeals, three hearings were held, and after seven months (5 July 2022) the exception of unconstitutionality is raised. The case is suspended and the next hearing is scheduled for 2 November 2022. Data retrieved from the court portal, <https://instante.justice.md>.

¹⁸² Data retrieved from the database of the Constitutional Court, <https://constcourt.md/ccdocs.php?l=ro>.

¹⁸³ Joint amicus curiae Brief of the Venice Commission and the OSCE/ODIHR relating to the offence of illicit enrichment, adopted by the Venice Commission at its 132nd Plenary session, 21-22 October 2022 [https://www.venice.coe.int/webforms/documents/?pdf=C-DL-AD\(2022\)029-e](https://www.venice.coe.int/webforms/documents/?pdf=C-DL-AD(2022)029-e).

Anticorruption Strategy (NIAS) 2017-2020, based on the impact and progress indicators stipulated in the document. Its Impact Monitoring Survey¹⁸⁴, examining the period 2017-2021, found the credibility of all anti-corruption institutions – NAC, NIA, law enforcement agencies and the judiciary - has fallen with the population in recent years.

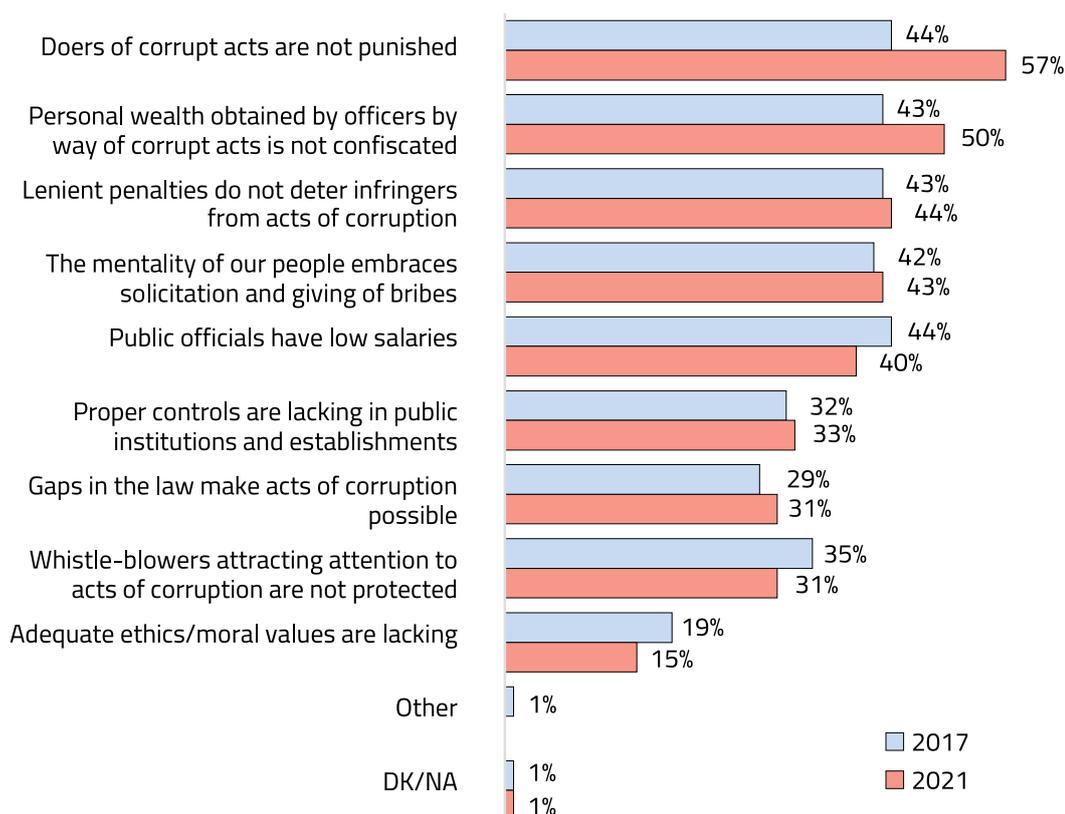
Figure 9. Population's perception of the credibility of institutions



Source: undp.org

The respondents (population) indicated the main reasons for corruption below:

Figure 10. Main reasons for corruption

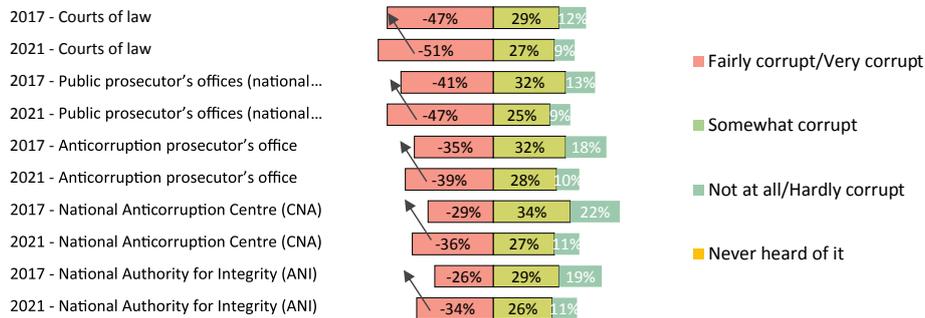


Source: undp.org

¹⁸⁴ National Integrity and Anti-corruption Strategy (NIAS) 2017-2020 Impact Monitoring Survey – Moldova, UNDP, 2021, www.md.undp.org/content/moldova/en/home/library/effective_governance/studiu-de-evaluare-a-impactului-strategiei-naionale-de-integrita1.html.

When asked about how corrupt the subject institutions were, businesses responded as follows:

Figure 11. Businesses' perception of the level of corruption of the institutions

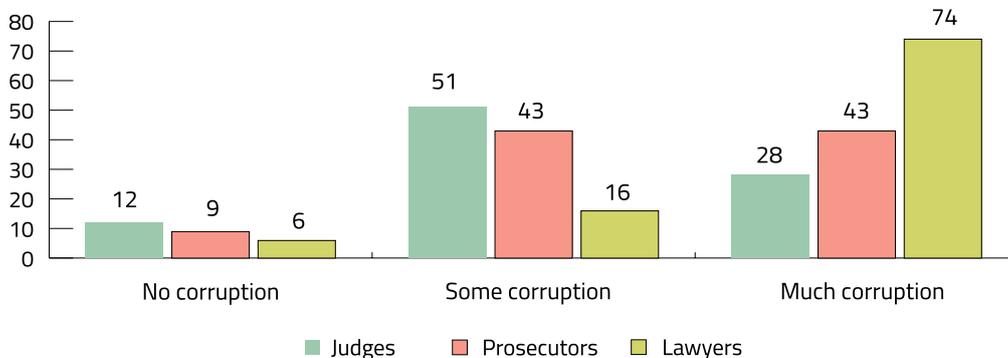


Source: undp.org

Based on the survey data, from the business perspective, as with the general population, perceptions of corruption in courts, prosecutors, including the APO, the NAC and NIA have all increased in 2021 compared to 2017.

In 2020, the LRCM carried out an opinion poll on the perception of judges, prosecutors and lawyers on corruption¹⁸⁵. Seventy-four percent of respondent lawyers, 43 % of prosecutors and 28% of judges perceived that there is much corruption in the Republic of Moldova; 51% of judges, 43% of prosecutors and 16% of lawyers consider that there is some corruption; and 12 % of judges and 9 % of prosecutors and only 6% of lawyers believe there is none. The totals by category as to some or much corruption in Moldova are astonishingly high for those who arguably play a key role in combating the problem: 90% of the lawyers, 79% of the judges and 86% of the prosecutors.

Figure 12. How much corruption is there in Moldova (%)?



Source: Legal Resources Centre from Moldova

All three professions pointed to the courts of appeal, the APO, followed by the POCOCSC as the most corrupt. Judges and lawyers pointed also to the SCM, followed by the NIJ. Prosecutors have placed NIJ in first place the corruption hierarchy, followed by the Selection and Career Board of Prosecutors. All three professions were unanimous that the most corrupt are the lawyers at the Licensing Commission of the legal profession.

¹⁸⁵ Perception of judges, prosecutors and lawyers on the justice reform and fight against corruption, Opinion poll, Legal Resources Centre from Moldova, 2020, <https://old.crjm.org/wp-content/uploads/2020/12/CRJM-Perceptia-judecatorilor-procurorilor-si-avocacilor-2020-web.pdf>.

When asked about causes of corruption, all three professions indicated the failure to hold wrongdoers accountable, the lack of transparency of the self-governing bodies, deficiencies in the promotion system and low salaries. Failure to hold perpetrators accountable for corruption is highlighted as the main reason for corruption both by the general population and legal specialists. This indicates a clear focus and direction for both anti-corruption institutions and policies.

Recommendations

- 1.** The National Institute of Justice and international community should ensure that legislative amendments in the anticorruption field are followed by targeted trainings for judges and other actors within the system. (immediate and continuous)
- 2.** Parliament should amend legislation to ensure that all cases (criminal, civil, administrative, misdemeanour) continue while any constitutional issues are under review. (5 months)
- 3.** The Parliament should amend legislation to provide that the statute of criminal liability or limitation no longer applies after the case is sent to court. (5 months)
- 4.** Courts should hold public court hearings in all high-profile cases, with exceptions made only under circumstances required by law and in conformity with the established procedure. (immediate and continuous)
- 5.** Courts should ensure a unified caselaw on integrity issues. (immediate and continuous)
- 6.** The SCM and Agency for Court Administration should ensure the proper application of the rules regarding anonymity of court decisions and reduce excessive anonymity. (immediate and continuous)

Annex1. Anti-corruption and integrity status quo in the Republic of Moldova (Rankings, Perceptions, Assessments and National Strategic Documents)

The Republic of Moldova's status in international and national anti-corruption rankings reveals a steady decline from 2012 until 2015–2016, mainly due to the authorities' reaction to the Bank Fraud and Laundromat events, a slight improvement in the following few years, a deterioration during the captured state period of 2016 – 2019, followed by a consistent improvement since the 2019 change of power. While there have been some advances, their impact to date has yet to be felt.

International overview

Eurojust Casework on Corruption: 2016–2021 Insights presents key findings based on Eurojust's corruption casework and expertise over the years in its first dedicated publication in the corruption field. The report aims to support national authorities dealing with cross-border corruption cases by providing an overview of problems and solutions, including the use of Eurojust's judicial cooperation tools. It analyses corruption cases registered at Eurojust between 1 January 2016 and 31 December 2021. During this reference period, 505 corruption cases were registered at Eurojust. Compared to the 78 cases registered at the Agency in 2016, the number of cases rose to 112 in 2021. Forty-two third countries were involved in Eurojust corruption cases in the period under review, highlighting the importance and added value of having a global network of contact points and Liaison Prosecutors stationed at Eurojust. Out of these 42 third countries, the Republic of Moldova is situated in the top 10 non-EU states, involved in seven corruption cases.¹⁸⁶

In its 2022 Pilot 5th Round of Monitoring under the Istanbul Anti-Corruption Action Plan¹⁸⁷ of the Republic of Moldova's anti-corruption reforms, the Organization for Economic Co-operation and Development (OECD) indicates weaknesses in respect of enforcement of corruption offences, investigation and prosecution of high-level corruption, ensuring anti-corruption specialisation and impartiality and autonomy of staff of the specialized anticorruption investigative body from external and internal pressure. More precisely, OECD states the following:

"The notion of high-level corruption appears to be not clearly understood by Moldova's law enforcement institutions; there is no indication that the authorities analyse high-level corruption cases separately from other crimes or use lessons learned from the convictions in high-level corruption for the formulation of anti-corruption policy or legislation; the mandate of APO is broader than high-level corruption; APO does not collect statistics on final conviction in the cases they are investigating and prosecuting; NAC has an analytical department which publishes analytical studies regarding the phenomenon of corruption but has produced no study specifically on high-level corruption; there is no evidence that the high-level corruption cases have been actively detected or investigated; APO does not have capacity to conduct its own intelligence gathering activities; the annual reports of NAC and APO miss information regarding high-level corruption."

OECD also pointed out that public allegations do not seem to prompt a consistent response from the law enforcement community "...and their reputation is not positive in this regard; no external evaluation of the specialized investigative bodies has been performed and public oversight mechanisms are not in place; the specialized anti-corruption law enforcement bodies, especially APO, need to do more in terms of public outreach and explaining the results of their work, including their decisions to close or not to open or pursue investigations in certain, especially high-profile corruption cases."

In December 2021, the Group of States against Corruption (GRECO) published the Fourth Evaluation Round Interim Compliance Report on the Republic of Moldova, which analyses corruption prevention in respect

¹⁸⁶ *Eurojust Casework on Corruption: 2016-2021. Insights*, European Union Agency for Criminal Justice Cooperation, 2022, www.eurojust.europa.eu/sites/default/files/assets/eurojust-casework-on-corruption-2016-2021-insights-report.pdf.

¹⁸⁷ *Anti-Corruption Reforms in Moldova: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan*, the Organisation for Economic Cooperation and Development, 2022, www.oecd-ilibrary.org/governance/anti-corruption-reforms-in-moldova_9b-b0367e-en.

of members of parliament, judges and prosecutors¹⁸⁸. GRECO concludes that Moldova has implemented satisfactorily only six of the 18 recommendations contained in the Fourth Round Evaluation Report. Of the remaining recommendations, nine have been partly implemented and three not at all. GRECO notes the achievement of the following results: the Law on the National Integrity Authority and the Law on Declaration of Assets and Personal Interests was amended in October 2021 aimed at strengthening the powers of integrity inspectors; verbal instructions to prosecutors are now to be confirmed in writing, and progress has been made to ensure that all hierarchical interventions regarding a case are properly documented. Further improvements need to be conducted as to...” publication of the draft legislation, amendments and all supporting documents in a timely manner, with sufficient time for consultations; the National Integrity Authority remains understaffed and without a specific training program for integrity inspectors in place to strengthen their capacities; more progress to ensure that cases are adjudicated without unjustified delays and to improve the sustainable transparency and accessibility of information on judicial activity in practice...”.

The **MONEYVAL** Fifth Round Mutual Evaluation 2019 Report¹⁸⁹ builds upon previous assessments and addresses the country's compliance with the Recommendations of the Financial Action Task Force (FATF). It states that “A wide spectrum of ML investigations and prosecutions (...) have been conducted in Moldova. However, only a limited number of investigations lead to prosecutions, the figures on the number and the value of confiscated assets remain low and do not appear to correspond to the scale of proceeds-generating crime in the country. The results are considerably weaker when taking into consideration the value of property that was effectively recovered. Several strategic documents have been adopted and implemented which demonstrates that depriving criminals of the proceeds of crime is a policy objective.” The report recommends, inter alia, that law enforcement authorities are “...provided with sufficient resources and capacities to make more effective use of financial intelligence (financial experts, forensic accountants, information technology hardware and software)” and that the country employs “the legislative framework to the fullest extent, to raise the effectiveness of confiscation of proceeds to higher degree, in particular regarding extended confiscation¹⁹⁰. More efforts should be placed in increasing the effectiveness of the asset recovery system”.

In Moldova Policy Notes 2021, the World Bank considers that attempts to determine tangible change in the fight against corruption have largely remained on paper, with concerns as to overturned verdicts through extraordinary proceedings or very few stolen assets from the Bank Fraud recovered. “...The efforts undertaken by the Moldovan authorities should focus on filling the institutional and legal gaps that have allowed integrity issues to emerge throughout the public sector, including by involving state owned enterprises in corruption schemes. The country should also focus on ending the culture of impunity for high-level corruption...”¹⁹¹. Among policy priorities and key actions on short term, the document indicates: “...reforming APO, namely to limit its mandate to prosecuting high-level corruption; amending the legislation on asset declarations to strengthen the content of the asset declaration form and introducing a risk-based approach to verification...”.

¹⁸⁸ *Corruption prevention in respect of members of Parliament, judges and prosecutors*, Interim Compliance Report, Republic of Moldova, GRECO, 2021 rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a5722f.

¹⁸⁹ *Anti-money laundering and counter-terrorist financing measures, Republic of Moldova*, Fifth Round Mutual Evaluation Report, MONEYVAL, 2019, <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Moneyval-Mutual-Evaluation-Report-Moldova-2019.pdf>.

¹⁹⁰ The legislation has been amended, but the Supreme Court of Justice issued three decisions (Case no. 3r-56/2022, no. 3r-74/2022 and no. 3r-75/2022) ruling that the extended confiscation requested by NIA, can be examined by the court in a separate procedure only after the fact-finding document is irrevocable. The SCJ supported the Chisinau Court of Appeal, stating that these rules of the Administrative Code are superior to the law amendments of 7 October 2021, jurisprudenta.csj.md/search_col_civil.php?id=67773; jurisprudenta.csj.md/search_col_civil.php?id=67786; [http://jurisprudenta.csj.md/search_col_civil.php?id=67768](https://jurisprudenta.csj.md/search_col_civil.php?id=67768).

¹⁹¹ *Moldova policy notes 2021: sectoral recommendations, strengthening institutions, enhancing competitiveness, and building resilience*, World Bank, 2021, openknowledge.worldbank.org/bitstream/handle/10986/36830/Moldova-Policy-Notes-2021-Sectoral-Recommendations.pdf?sequence=1&isAllowed=y.

In its 2021 staff report on Moldova, the International Monetary Fund states that macro-critical governance and institutional reforms have been long overdue, with rule-of-law and anti-corruption frameworks being ineffective:¹⁹² “(...) Moldova continues to suffer from significant corruption and governance vulnerabilities. The anti-corruption legal and institutional infrastructure (...) lacks effectiveness and needs to be insulated from undue influence. Corruption investigations are focused on petty bribery and private citizens rather than on public officials, while some types of corruption are not adequately prosecuted. Sanctioning in corruption cases appears lenient with wide application of fines and reduced/suspended sentencing. Criminal enforcement efforts need to be better targeted at high-level corruption with the application of dissuasive sanctions. The AML/CFT regime, while strong in some areas, is still not sufficiently used to support anti-corruption efforts. Understanding money laundering risks associated with corruption and application of preventive measures (e.g., identifying beneficial owners and political exposed persons) are still inadequate. AML/CFT tools could also be better leveraged to support criminal enforcement and asset recovery efforts.” Under the agreement with the IMF, by end December 2022 Moldova must amend relevant legislation to narrow the mandates of the APO and NAC to high-level corruption involving investigation or prosecution of high public officials and corruption “in large proportions” or “resulting in serious consequences”, as defined by the Criminal Code.

In the ranking illustrating money laundering and terrorist financing (hereinafter ML/TF) risks around the world, evaluated using the FATF fourth-round methodology of the Basel AML Index, in 2021, the Republic of Moldova ranked 65 out of 110¹⁹³ (where the first place indicates the highest risk and the 110th place – the lowest risk). The situation was considerably better in 2017, but deteriorated dramatically the following year when the country’s ranking fell 31 positions. It has remained more or less unchanged since.

Figure 13. Moldova’s ML/TF risk score



Source: *baselgovernance.org*

Following the same index, the risk score for the Republic of Moldova in 2021 was 4.98¹⁹⁴. (The score of 8.45 represents the highest risk of corruption.) The ML/TF risk has been gradually decreasing since 2017, indicating that the country’s situation is improving. The score covers 17 indicators in five domains relevant to ML/TF risk at the jurisdiction level: the quality of the national AML/CFT framework; indicators of bribery and corruption; financial transparency and standards; public transparency and accountability, legal and political risks.

According to the World Justice Project Rule of Law Index 2021¹⁹⁵ Moldova is ranked 111 out of 139 (the higher the score, the more corrupt the country) with a 0,36 factor score. The index measures the absence

¹⁹² *Country Report, Republic of Moldova No. 22/1*, International Monetary Fund, 2021, <https://www.imf.org/-/media/Files/Publications/CR/2022/English/1MDAFA2022001.ashx>.

¹⁹³ *Basel AML Index 2021: 10th Public Edition Ranking money laundering and terrorist financing risks around the world*, Basel Institute on Governance, 2021, baselgovernance.org/sites/default/files/2021-09/Basel_AML_Index_2021_10th%20Edition.pdf

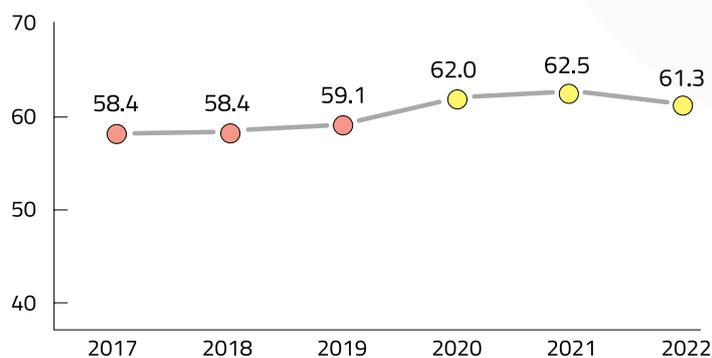
¹⁹⁴ *Idem*.

¹⁹⁵ *World Justice Project Rule of Law Index*, 2021, worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf.

of corruption in government and considers three forms of corruption: bribery, improper influence by public or private interests and misappropriation of public funds or other resources. These are examined with respect to government officers in the executive branch, the judiciary, the military, police, and the legislature.

According to Index of Economic Freedom¹⁹⁶ of the Heritage Foundation, the Republic of Moldova’s economic freedom score is 61.3 (100 is the highest score), making its economy the 78th most free in the 2022 Index. Five years ago, the Republic of Moldova’s economy began to decelerate, and growth turned negative in 2020 before recovering in 2021. During those five years, economic freedom continued to expand slowly.

Figure 14. Moldova’s index of economic freedom score



Source: heritage.org

Led by higher scores for rule of law and government spending, the Republic of Moldova has recorded a 3.3-point overall gain of economic freedom since 2017 and remains in the “Moderately Free” category for the third year in a row.

Figure 16. Moldova’s factors of economic pillars during 2021

OVERALL SCORE 61.3		WORLD RANK 78	
RULE OF LAW		GOVERNMENT SIZE	
Property Rights	55.9 ▼	Tax Burden	55.9 ▲
Judicial Effectiveness	30.7 ▲	Government Spending	30.7 ▼
Government Integrity	34.7 ▼	Fiscal Health	34.7 ▼
REGULATORY EFFICIENCY		OPEN MARKETS	
Business Freedom	55.9 ▼	Trade Freedom	55.9 ▼
Labor Freedom	30.7 ▲	Investment Freedom	30.7 —
Monetary Freedom	34.7 ▲	Financial Freedom	34.7 —

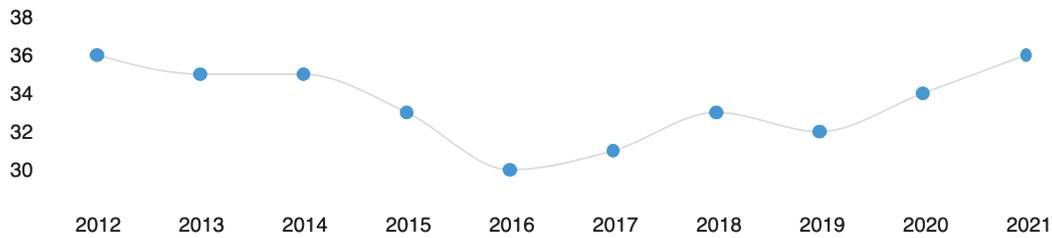
Source: heritage.org

According to the Corruption Perceptions Index of Transparency International¹⁹⁷, in 2021, the Republic of Moldova scored 36 points. The score steadily increased by 2 points since 2019, whereas the lowest score (in 10 years) was registered in 2016, when the country received only 30 points. The score in 2021 equals the one in 2012, a recovery since its low point in 2016. There has been no progress over the past ten years, though Moldova has recovered from its 2016 low point and may now be trending positive.

¹⁹⁶ Economic freedom is measured based on 12 quantitative and qualitative factors, grouped into four broad categories, or pillars, of economic freedom: Rule of Law (property rights, government integrity, judicial effectiveness); Government Size (government spending, tax burden, fiscal health); Regulatory Efficiency (business freedom, labour freedom, monetary freedom); Open Markets (trade freedom, investment freedom, financial freedom). Each of the 12 economic freedoms within these categories is graded on a scale of 0 to 100. A country’s overall score is derived by averaging these twelve economic freedoms. *Index of Economic Freedom*, Heritage Foundation, 2022, www.heritage.org/index/country/moldova.

¹⁹⁷ *Corruption Perception Index*, Transparency International, 2021, <https://www.transparency.org/en/cpi/2021/index/mda>.

Figure 17. Moldova's score changes in corruption perception



Source: transparency.org

The Index of Public Integrity¹⁹⁸ score, which is part of the Corruption Risk Forecast (along with transparency) for the Republic of Moldova is 6.28 out of 10 (higher value = better performance). The components of the score are: opportunities (circumstances which enable corruption) and constraints (permanent disabling circumstances of corruption). They reflect the legal response of authorities and society to corruption.

Figure 18. Moldova's Index of Public Integrity

Components	2008	2020	Trendline	Components	Component Score (max=10)	World Rank	Income Group Rank	Regional Rank
Budget Transparency	7.36	9.35		Opportunities for Corruption				
Administrative Burden	7.42	9.51		Administrative Transparency	7.75	24/114	9/29	6/12
Judicial Independence	2.9	2.93		Online Services	7.45	43/114	15/29	6/12
Press Freedom ①	4.15	4.96		Budget Transparency	7.42	59/114	22/29	7/12
E-Citizenship	2.18	5.23		Constraints on Corruption				
				Judicial Independence	2.91	106/114	25/29	10/12
				Freedom of the Press	6.88	58/114	11/29	5/12
				E-Citizenship	5.28	72/114	24/29	9/12

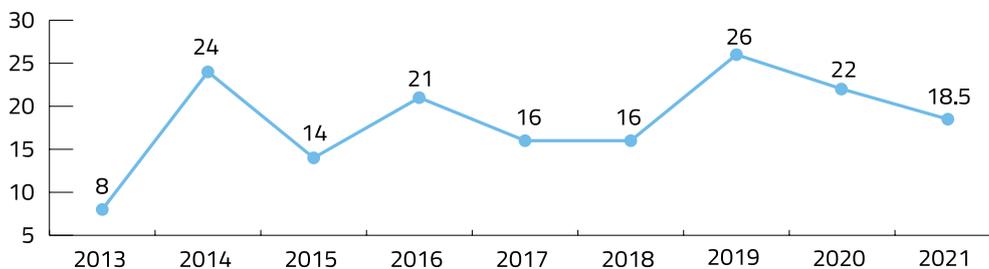
● positive change; ● negative change; ● change not statically significant.

Source: corruptionrisk.org

National overview

In 2005, according to the Public Opinion Barometer (POB), the Moldovan population's trust in justice was at 41%. The lowest percentage was recorded in 2013 – 8%, in the middle of the Bank Fraud and Laundromat events. It increased to 24% in 2014, generated by the political events related to European integration and the announcements of reforms¹⁹⁹. In 2019 it reached 26%, determined by political change and impetus but diminished to 18.5% in 2021. According to POB, in 2021, among the issues that worried the respondents the most, corruption was in fourth place, with 43.5% of respondents. Only 8.2% were content with the authorities' fight against corruption.

Figure 19. Moldova's population trust in justice in percentage



Source: Public Opinion Barometer

¹⁹⁸ Moldova's Corruption Forecast, Index of Public Integrity, <https://corruptionrisk.org/country/?country=MDA#integrity>.

¹⁹⁹ Public Opinion Barometer Republic of Moldova, Institute for Public Policy, <http://bop.ipp.md/>.

In a Public Opinion Survey published in April 2022 by the International Republican Institute's Centre for Insights in Survey Research using data collected between 9 February – 30 March 2022, it was found that:

- a) Corruption is seen as the fourth most important problem faced by the Republic of Moldova (27% of the respondents);
- b) Corruption is seen as the fifth most important issue that should be the top priority for the Government (11% of the respondents);
- c) Corruption is seen as an area where the situation is getting worse (50 % of the respondents).

National strategic anti-corruption documents

National Integrity and Anti-corruption Strategy (NIAS)

Initially adopted for 2017-2020, extended until 2023, NIAS²⁰⁰ focuses on the recovery of criminal assets, guaranteeing respect for rights and fundamental freedoms, protection of whistle-blowers and victims of corruption, strengthening ethics and integrity in the public, private and non-governmental sectors, ensuring the transparency of public institutions and transparency of funding of political parties and the media. As part of its implementation, nine sectoral anti-corruption plans were approved and implemented: in Customs, public order, administration and privatisation of public property, taxes, environment, agri-food, education, health and compulsory health insurance and public procurement. Local anti-corruption plans were put in place by "rayon" (district), the Chisinau municipality and the special legal-status autonomous territorial units. These plans contain measures to be implemented on a priority basis according to identified risks and needs. Reports on the implementation of the sectoral plans for anti-corruption are regularly prepared, to identify progress and deficiencies. Despite the implemented actions, the impact of these efforts remains unclear.

Strategy for Ensuring Independence and Integrity of the Justice Sector

The Strategy for Ensuring Independence and Integrity of the Justice Sector for 2022-2025²⁰¹ and its Action Plan identify the need to render effective the authorities' activities in fighting corruption. Its emphases are to efficiently investigate cases of corruption and lack of integrity by limiting the mandate of APO to investigating high-profile corruption cases and restructuring NAC, implementing pre-vetting and vetting mechanisms and strengthening the capacity of the judiciary and prosecution to manage integrity issues.

National Strategy for Prevention and Fighting Money Laundering and Terrorism Financing

In 2018, the Republic of Moldova was subject to the 5th Evaluation Round on the implementation degree of the 40 FATF/GAFI Recommendations. To implement the recommendations of the report, Moldova drafted and adopted the National Strategy for Prevention and Fighting ML and TF²⁰². The Strategy lays out a plan to develop and strengthen an efficient national system for prevention and combating ML/TF according to international standards through a variety of coordination and cooperation policies and activities.

²⁰⁰ Parliament Decision no. 56 on the approval of the National Integrity and Anti-corruption Strategy for 2017-2023 of 30 March 2017, https://www.legis.md/cautare/getResults?doc_id=129679&lang=ro#.

²⁰¹ Law on the approval of the Strategy for Ensuring Independence and Integrity of the Justice Sector for 2022-2025 and the Action Plan for its Implementation no. 211 of 6 December 2021, https://www.legis.md/cautare/getResults?doc_id=129241&lang=ro.

²⁰² Parliament Decision no. 239 on the approval of the National Strategy for Preventing and Fighting Money Laundering and Terrorism Financing for 2020-2025 and the Action Plan for its implementation of 16 December 2020, https://www.legis.md/cautare/getResults?doc_id=125264&lang=ro.



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