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**POSITION PAPER:**

**THE ANTI-CORRUPTION PROSECUTION  
OFFICE SHOULD INVESTIGATE ONLY  
HIGH-LEVEL CORRUPTION**

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## SUMMARY

This position paper was elaborated by the Legal Resources Centre from Moldova and Expert Forum Romania in November 2018. The document examines the mandate of the Anti-corruption Prosecution Office (APO) of the Republic of Moldova and recommends limiting it to cases of high-level corruption. Currently the Anti-Corruption Prosecution Office, although designed to fight high-level corruption, devotes significant efforts to cases of small-scale corruption. The fight against small-scale corruption is not able to eradicate the sources of corruption in a country affected by endemic corruption and, therefore, cannot fundamentally influence this phenomenon. Given the endemic level of corruption in the Republic of Moldova, we consider that corruption cannot effectively be reduced without prioritizing the fight against high-level corruption. In this context, it is important to allocate sufficient resources to fight high-level corruption by specializing and limiting the competencies of the Anti-corruption Prosecution Office to investigating cases of high-level corruption, alongside with other non-criminal measures and tools of fighting corruption.

Limiting the mandate of the Anti-corruption Prosecution Office to cases of high-level corruption will help its prosecutors to focus on the cases of high-level corruption, which require increased guarantees of independence as well as special methods and means of investigation due to the complexity of the cases and interests involved. Such a mandate justifies the maintenance of a specialized body with a special status. At the same time, granting competencies to deal with small-scale corruption to a specialized prosecution office cannot be justified in financial, procedural or management terms. Other bodies can easily handle these investigations at a much lower budgetary cost. In addition, the mandate of the Anti-corruption Prosecution Office should not include investigation of crimes that are unrelated with corruption. Focusing the APO's mandate on high-level corruption will allow the anti-corruption prosecutors to focus their efforts on important complex cases without having to compromise the quality of their work due to heavy workload. The proposed amendments require mainly the adjustment of the Code of Criminal Procedure.

## THE MANDATE OF THE ANTI-CORRUPTION PROSECUTION OFFICE PROVIDED BY THE LEGISLATION IN FORCE

The Anti-corruption Prosecution Office is one of the two specialized prosecution offices provided by law<sup>1</sup>. The specialized prosecution offices operate in special areas provided by the Law on Prosecution Service and the Law on Specialized Prosecution Offices<sup>2</sup> and exercise their mandate on the entire territory of the Republic of Moldova. The specialized prosecution office is led by the Chief Prosecutor, assimilated to the Deputy Prosecutor General, assisted by one or more deputies, who is assimilated to the Chief Prosecutor of the General Prosecution Office department. Subdivisions may be created within the specialized prosecution office and it may have territorial offices or representative bodies on a local level.<sup>3</sup> In Romania, there are also two specialized prosecution offices – the National Anti-corruption Directorate (DNA) and the Directorate for Investigating Organized Crime and Terrorism (DIICOT). Both exercise their exclusive mandates throughout the country and organize their own territorial structures. Recently, a Section to investigate all crimes committed by magistrates was set up within the Prosecution Office of the High Court of Cassation and Justice. Traditionally, in Romania there is also a Military Prosecution Office with a limited mandate concerning the crimes committed by the military.

The Anti-corruption Prosecution Office of Moldova specializes in combating corruption crimes, acts related to corruption and has the following specific duties:

- a) exercises criminal investigation in cases assigned within its competence according to the criminal procedure law (Article 270<sup>1</sup> of the Code of Criminal Procedure);
- b) oversees the criminal investigation in cases handled by the National Anti-Corruption Centre (small-scale corruption);
- c) represents the accusation in the court of first instance, court of appeal and cassation in cases referred to in items a) and b) above.<sup>4</sup>

According to art. 270<sup>1</sup> para. (1) of the Code of Criminal Procedure, the Anti-corruption Prosecution Office **conducts criminal investigation** in the following three categories of cases:

**A:** in case of crimes set forth in: **art. 181<sup>1</sup>, 181<sup>2</sup>, 242<sup>1</sup>, 242<sup>2</sup>, 324–329, 332–335**,<sup>5</sup> of the Criminal Code and in case of two crimes committed using the official position set forth in **art. 190** and **191**,<sup>6</sup> if the

<sup>1</sup> Law on Prosecution Service no. 3 of 25 February 2016, in force since 1 August 2018 (with some exceptions).

<sup>2</sup> Law on Specialised Prosecution Offices no. 159 as of 7 July 2016, in force since 1 August 2018.

<sup>3</sup> Art. 9 para. (3) of the Law on Prosecution Service.

<sup>4</sup> Art. 9 para. (4) of the Law on Prosecution Service.

<sup>5</sup> **Art. 181<sup>1</sup>** (voters' corruption), **181<sup>2</sup>** (illegal financing of political parties or electoral campaigns), **242<sup>1</sup>** (tampering of a sport event), **242<sup>2</sup>** (arranged bets), **art. 324–329** (art. 324 – passive corruption; art. 325 – active corruption; art. 326 – influence peddling; art. 326<sup>1</sup> – exercise of powers in public sector in a situation of conflict of interest; art. 327 – abuse of power or abuse of official position; art. 328 – excess of power or excess of official authority; art. 329 – negligent performance of duties), **art. 332–335** (art. 332 – forgery in public documents; art. 332<sup>1</sup> – fraudulent obtaining of means from external funds; art. 332<sup>2</sup> – embezzlement of means from external funds; art. 333 – taking bribes; art. 334 – giving bribes; art. 335 – abuse of official position).

<sup>6</sup> **Art. 190** (fraud) and **art. 191** (embezzlement of another person's property).

crimes were committed by the following subjects:

- a. high-ranking officials within the meaning of art. 123 para. (3) of the Criminal Code,<sup>7</sup> except for mayors and deputy mayors of villages and communes, local counselors 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.

**B:** in case of the same crimes, irrespective of the capacity of the person, if the amount, value of goods, services, privileges, advantages in any form and other benefits claimed, promised, accepted, offered, given or received, exceed 5,000 conventional units (250,000 MDL or approximately EUR 13,000) or if the value of the damage caused by the crime exceeds 50,000 conventional units (2,500,000 MDL or approximately EUR 130,000).

**C:** in case of crimes set forth in art. 181<sup>2</sup> (illegal financing of political parties or electoral campaigns), if the value of financing, administrative resources, donations, allocations from the state budget and/or of the means from the electoral fund used for the commission of the crime exceeds 5000 conventional units (250,000 MDL or approximately EUR 13,000).

Under art. 270<sup>1</sup> para. (2) of the Criminal Procedure Code the Anti-corruption Prosecution Office **oversees the criminal investigation** in cases where the criminal investigation is conducted by the criminal investigation body of the National Anti-corruption Centre. Under art. 269 of the Criminal Procedure Code, the criminal investigation body of the National Anti-corruption Centre (NAC) conducts criminal investigation regarding the crimes set forth in articles 239–240,<sup>8</sup> 243,<sup>9</sup> 279,<sup>10</sup> and 324–335,<sup>11</sup> of

<sup>7</sup> Under art.123 (para. 3) of the Criminal Code a high-ranking public official is an official person whose appointment or election is regulated by the Constitution of the Republic of Moldova or who is appointed in office, by appointment or by election, by the Parliament, the President of the Republic of Moldova or the Government, another person holding high-ranking public position stipulated by the law; the person to whom the high-ranking public official delegates his/her powers. See in Annex 1 to the position paper the positions held by high-ranking public officials included in the Annex to Law No. 199 as of 16 July 2010 on the Status of Persons Holding Senior State Functions.

<sup>8</sup> **Art. 239** – violation of crediting rules, loan granting policies or rules for granting indemnity/insurance indemnity; **art. 239<sup>1</sup>** – malpractice or fraudulent management of the bank, the investment company, the insurance company; **art. 239<sup>2</sup>** – hampering of banking supervision; **art. 240** – use of means from internal or external loans guaranteed by the state contrary to their purpose.

<sup>9</sup> **Art. 243** – money laundering.

<sup>10</sup> **Art. 279** – funding terrorism.

<sup>11</sup> **Art. 324** – passive corruption; **art. 325** – active corruption; **art. 326** – influence peddling; **art. 326<sup>1</sup>** – exercise

the Criminal Code, as well as the crimes committed in relation to such crimes, with the exception of cases falling under the exclusive mandate of Anti-corruption Prosecution Office (art. 270<sup>1</sup> para.1).

Moreover, under art. 271 para. (7) of the Criminal Procedure Code, **the Prosecutor General and his/her deputies may require that the criminal investigation be conducted by any criminal investigation body** in line with the provisions of the Criminal Procedure Code.<sup>12</sup>

In Romania, the corruption offences are provided for criminal investigation by prosecutors,<sup>13</sup> notwithstanding the fact whether it is small-scale corruption or high-level corruption. The cases of high-level corruption are assigned exclusively to the prosecutors of the National Anti-corruption Directorate (DNA). Corruption offences are defined by the Criminal Code and the Law 78/2000, which defines offences assimilated to corruption and offences against the financial interests of the European Union.

At present, the powers of the DNA are stipulated by the Emergency Government Ordinance (EGO) 43/2002, as amended, depending on several criteria:

1. the capacity of the person/subject,<sup>14</sup>
2. the value of the corruption offence object – over 10,000 Euro,
3. the value of the material damage caused by the offence – over 200,000 Euro, or one million Euro in the cases of the offences stipulated by art. 246, 297 and 300 of the Criminal Code.<sup>15</sup>

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of powers in public sector in a situation of conflict of interest; **art. 327** – abuse of power or abuse of official position; **art. 328** – excess of power or excess of official authority; **art. 329** – negligent performance of duties; **art. 330<sup>1</sup>** – violation of the confidentiality concerning information in assets and personal interests' declarations; **art. 330<sup>2</sup>** – illicit enrichment; **art. 332** – forgery of public documents; **art. 332<sup>1</sup>** – fraudulent obtaining of means from external funds; **332<sup>2</sup>** – embezzlement of means from external funds.

<sup>12</sup> For example, since 2016–2017, there was a tendency to allocate the criminal prosecution of the judges suspected of committing the offence provided by art. 307 of the Criminal Code (issuing a sentence, decision, ruling or judgement contrary to the law), an offence not covered by the exclusive powers of the Anti-Corruption Prosecution Office or the NAC.

<sup>13</sup> Similar to the institution of criminal investigation in Moldova.

<sup>14</sup> Members of Parliament; senators; Members of the European Parliament from Romania; the member designated by Romania to the European Commission; members of Government, state secretaries or undersecretaries and their counterparts; advisors to ministers; judges of the High Court of Cassation and Justice and of the Constitutional Court; other judges and prosecutors; members of the Superior Council of Magistracy; the president of the Legislative Council and his deputy; the Ombudsman and his deputies; presidential advisors and state counsellors within the Presidential Administration; state councillors of the prime minister; members and external financial auditors of the Court of Accounts of Romania and county chambers of accounts; the governor, first deputy governor and the deputy governors of the National Bank of Romania; the president and vice-president of the Competition Council; officers, admirals, generals and marshals; police officers; presidents and vice-presidents of county councils; the general mayor and the deputy mayors of Bucharest; the mayors and deputy mayors of Bucharest municipality sectors; mayors and deputy mayors of municipalities; county councillors; prefects and sub-prefects; the heads of the central and local public authorities and institutions and persons in positions of control within them, with the exception of the heads of public authorities and institutions at the level of cities and localities and persons with control functions within them; lawyers; the commissioners of the Financial Guard; customs staff; persons holding the senior positions, from director-level and up, in the autonomous administrations of national interest, of national companies and societies, of the banks and commercial companies to which the state is the majority shareholder; of the public institutions that have interest in privatisation processes and the central units of the finance and banking; the persons referred to in art. 293 (crimes committed by members or arbitration courts or related to them) and 294 (crimes committed by foreign officials or related to them) of the Criminal Code.

<sup>15</sup> **Art. 246** (misappropriation of public acquisitions), **art. 297** (abuse of power) and **art. 300** (usurpation of the position/function).

Offences concerning the financial interests of the European Union are exclusively within the mandate of the DNA, irrespective of the value of the damage and the capacity of the person who committed them. If the military commit one of these offences, they will be investigated by the military unit of the DNA.

As regards the mandate of the DNA, the Romanian legislation has experienced significant fluctuations in trying to achieve a fair balance between the need to efficiently combat high-level corruption and to optimally use the special resources available to the DNA. The above-mentioned thresholds on the value of damage have been steadily increasing and some offences have been excluded from the DNA's mandate, so that only those offences that can be subsumed to the concept of high-level corruption remain within the mandate of the DNA. Pursuant to a recent amendment, corruption offences committed by magistrates, which have been investigated so far by the DNA, are under the jurisdiction of the newly created section for investigation of offences committed by magistrates within the Prosecution Office of the High Court of Cassation and Justice.

## THE WORKLOAD OF THE ANTI-CORRUPTION PROSECUTORS

According to the activity report of the General Prosecutor's Office of the Republic of Moldova for 2017<sup>16</sup>, the data provided by the Anti-corruption Prosecution Office and the Activity Report of the National Anti-corruption Centre for 2017<sup>17</sup>, the following main data regarding the workload of the anti-corruption prosecutors in Moldova can be noted (Table 1):

**Table 1: The workload of anti-corruption prosecutors: conducting and overseeing the criminal investigation in 2015-2017**

Activity Type	Indicator	2015	2016	2017
Conducting the criminal investigation	Notifications registered in the corresponding year	295	416	657
	Notifications under examination by prosecutors	316	430	702
	<b>Criminal cases under proceedings (total number)</b>	<b>307</b>	<b>826</b>	<b>1233</b>
	Criminal investigations pending at the beginning of the year (backlog)	102	112	484
	Initiated criminal investigations	172	269	449
	Completed criminal investigations	84	166	301
	Criminal investigations pending at the end of the year (backlog)	112	484	594
	<b>Submitted to court</b>	<b>43</b>	<b>78</b>	<b>177</b>
Overseeing the criminal investigation	<b>Criminal cases under proceedings (total number)</b>	<b>1842</b>	<b>2200</b>	<b>2003</b>
	Criminal investigations pending at the beginning of the year (backlog)	785	877	838
	Initiated criminal investigations	655	795	722
	Completed investigations	662	612	610
	Criminal investigations pending at the end of the year (backlog)	886	842	888
	<b>Submitted to court</b>	<b>255</b>	<b>259</b>	<b>278</b>
Representation in court	Judgements issued by the first instance	<b>231</b>	<b>228</b>	<b>270</b>

The statistical data for the period of 2015-2017 confirm the following about the Anti-corruption Prosecution Office:

- a) The number of notifications received by the Anti-corruption Prosecution Office has doubled in 2017 as compared to 2015;**

<sup>16</sup> Activity Report of the Prosecutor 's Office for the year 2017 available at <http://www.procuratura.md/md/d2004/>.

<sup>17</sup> Activity Report of the NAC for the year 2017 available at <https://www.cna.md/lib.php?l=ro&idc=143&t=/Studii-si-analize/Rapoarte-de-activitate&>.

- b) The number of criminal cases under proceedings by anti-corruption prosecutors (conducting criminal investigation) increased more than 4 times within 2015-2017, from 305 to 1,233;**
- c) The number of criminal investigations conducted by the prosecutors and pending as of 31 December 2017 (594) was almost double as compared to the number of criminal investigations completed by the prosecutors in the same year (301);**
- d) It appears that in recent years the number of criminal investigations initiated by the NAC has not decreased significantly (from 795 in 2016 to 722 in 2017);**
- e) In 2017, the anti-corruption prosecutors submitted 455 criminal cases to court. The judges have examined only 270 cases.**

According to the staffing structure, the Anti-corruption Prosecution Office (including territorial offices) should employ 129 persons, of which: 50 prosecutors, 15 criminal investigation officers, 15 investigative officers, 33 prosecutor's counsellors, 10 specialists, three drivers and three technical staff employees. In reality, however, at the end of 2017, only 40 prosecutors were employed at the Anti-corruption Prosecution Office (six others held leadership positions and four positions were vacant).<sup>18</sup> In November 2018, according to data provided by the Anti-corruption Prosecution Office, 8 positions of the prosecutor and 2 positions of investigative officers were vacant. The NAC staffing structure includes 342 positions.<sup>19</sup>

Taking into account the actual number of anti-corruption prosecutors who were employed in 2017, it appears that the average workload of an anti-corruption prosecutor per year included at least:

- a) 31 criminal cases for conducting the criminal investigation (out of a total of 1,233 cases under proceedings);**
- b) 50 criminal cases for overseeing the criminal investigation (out of a total of 2,003 cases under proceedings);**
- c) 11 cases submitted to court (out of a total of 455 cases submitted to court).**

The de facto workload is probably higher given that some prosecutors are dealing with a limited number of criminal investigations, which are particularly complex. Given the complexity of investigations in corruption cases, the numbers above reveal a heavy workload. Moreover, over the last three years, the workload of anti-corruption prosecutors has increased considerably and there is no precondition to consider that the number of cases that the Anti-corruption Prosecution Office should deal with under the current legislation will decrease. These data require at least a consideration regarding need for adjusting the mandate of the Anti-corruption Prosecution Office to ensure a reasonable workload that would allow anti-corruption prosecutors to perform criminal investigations and representation in courts qualitatively and efficiently.

The types of offences based on which the criminal investigations were under proceedings of the Anti-corruption Prosecution Office in 2017 provide useful data for reviewing the mandate of this Prosecution Office. They are summarized in Table 2 below:

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<sup>18</sup> See for details the investigation „Reformă cu sincope la Procuratură” (Syncope Reform of the Prosecution office) by Mariana RAȚĂ and Victoria DODON, 27 December 2017, available at <https://anticoruptie.md/ro/special/reforma-cu-sincope-la-procuratura>.

<sup>19</sup> The decision of the Parliament on the approval of the structure and minimum staff of the National Anti-corruption Centre no. 34 as of 11 March 2016, as amended by the decision of the Parliament no. 62 as of 29 March 2018.

**Table 2: Categories of offences in criminal investigations conducted and overseen by anti-corruption prosecutors in 2017**

Conducting the criminal investigation <sup>20</sup>			Overseeing of the criminal investigation <sup>21</sup>		
Criminal offence	No.	%	Criminal offence	No.	%
Corruption offences (art. 324, 325, 326, 333, 334)	158	35%	Passive corruption	89	12%
Abuse of power or abuse of official position (art. 327, 335)	89	20%	Active corruption	54	7%
Excess of official authority (art. 328)	60	13%	Influence peddling	182	25%
Negligence (art. 329)	10	2%	Abuse of power or abuse of official position (including private sector)	100	14%
			Excess of power or excess of official authority	73	10%
			Negligence of official duties	13	2%
			Forgery in public documents	28	4%
			Taking bribes	6	1%
<u>Defrauding, misappropriation (art. 190, 191)</u>	55	12%	Illicit enrichment	6	1%
			Embezzlement of property using the official position	20	3%
Financial and economic offences, tax evasion, money laundering (art. 238 - 250)	22	5%	Financial and economic offences	70	10%
<u>Offences against justice (art. 303 - 323)</u>	15	3%			
<u>Other categories</u>	40	9%	<u>Other categories</u>	81	11%
<b>Total:</b>	<b>449</b>			<b>722</b>	

The criminal cases submitted to court by anti-corruption prosecutors show the following picture (Table 3).

**Table 3: Categories of offences in cases submitted to court by anti-corruption prosecutors in 2017**

Criminal offence	Criminal investigation conducted by APO		Criminal investigation conducted by NAC	
	No.	%	No.	%
Passive corruption (art. 324)	37	21%	31	11%
Active corruption (art. 325)	16	9%	47	17%
Influence peddling (art. 326)	47	27%	90	32%
Negligence (art. 329)	2	1%	5	2%
Taking bribes (art. 333)			2	1%
Abuse of power or abuse of official position (art. 327, 335)	22	12%	20	7%
Excess of power or excess of official authority (art. 328, 336)	11	6%	20	7%
<u>Fraud (art. 190) and embezzlement of another person's property (art. 191)</u>	12	7%	20	7%
Financial and banking offences (art. 238, 239, 240, 251, 252, 253)	1	0.5%	1	0.3%

<sup>20</sup> According to data from the Activity Report of the General Prosecutor's Office for 2017.

<sup>21</sup> According to data from the Activity Report of the NAC for 2017.

Criminal offence	Criminal investigation conducted by APO		Criminal investigation conducted by NAC	
	No.	%	No.	%
Tax evasion (art. 241-244, 249, 250)	1	0.5%	6	2%
Smuggling (art. 248)	3	2%		
Theft (art. 186)			1	0.3%
<u>Offences against justice (art. 303-309; 310-323)</u>	<u>20</u>	<u>11%</u>		
<u>Other offences</u>	<u>5</u>	<u>3%</u>	<u>35</u>	<u>13%</u>
<b>Total:</b>	<b>177</b>		<b>278</b>	

For comparison, Table 4 below briefly shows the workload of DNA anti-corruption prosecutors for the years 2015-2017, in relation to the number of DNA prosecutors. Table 5 below shows the data on the number and types of cases submitted to court by DNA prosecutors in 2015-2017.

**Table 4: Workload of the DNA prosecutors in 2015 - 2017**

	2015	2016	2017
Cases to resolve	10974	12353	11234
New incoming cases	5988	5251	3668
Not resolved cases	7102	7566	6078
Resolved cases	2656	3341	3893
Cases submitted to court	357	403	381
Defendants brought to court/out of which legal entities	1258 / 83	1271 / 114	997 / 91
Number of investigating prosecutors	97	120	107
Number of court prosecutors	34	40	42
Causes solved <u>on average</u> by an investigating prosecutor/ cases submitted to court	27 / 4	28 / 3	36 / 4

**Table 5: Categories of offences in cases submitted to the court by DNA prosecutors in 2015 - 2017**

Criminal offences		2015	2016	2017		
Total number of offences submitted to the court		2374	2275	1588		
Offences under Law 78/2000	on corruption	1461	566	937	313	
	assimilated to corruption		685		454	243
	related to those of corruption		3		2	0
	concerning EU funds		207		316	381
Under special laws		327 – ex 149 tax evasion, 256 money laundering	390 – ex 230 tax evasion, 134 money laundering	228 – ex 148 tax evasion, 73 money laundering		
Under the Criminal Code		586	623	432		

It follows from the information presented in Tables 4 and 5 above, which are taken from the activity reports of the DNA, that only a part of cases under proceedings are solved each year. As a matter of fact, we do not observe either noticeable variation in the number of cases solved on average by a prosecutor, or in the number of cases submitted to the court by an investigation prosecutor. This constancy seems to indicate, in fact, the objective limits of a prosecutor that handles complex cases on corruption at high level (grand corruption). Therefore, the mandate of a specialized structure should also be determined depending on these indicators and it is in the interest of the society that the offences are investigated promptly, as close as possible to the date of their commission.

## RECOMMENDATIONS: CASES TO BE EXCLUDED AND/OR ADDED WITHIN THE MANDATE OF THE ANTI-CORRUPTION PROSECUTION OFFICE

### 1) Exclusion from the mandate of the Anti-corruption Prosecution Office of the function to conduct criminal investigation in cases handled by the National Anti-corruption Centre.

*Reasons:* Although it resulted from the Prosecution Office reform of 2016 that the Anti-corruption Prosecution Office should focus on investigation of cases of high-level corruption, this did not happen because the Anti-corruption Prosecution Office maintained the function to oversee the criminal investigations conducted by NAC and NAC's mandate was not reduced significantly. Thus, the Anti-Corruption Prosecution Office has a broad mandate, which does not allow it to focus adequately on the cases of high-level corruption. More than 700 criminal investigations conducted by NAC are supervised annually by anti-corruption prosecutors. More than 200 of such cases are subsequently represented in court by anti-corruption prosecutors. This means more than a half of all cases represented by anti-corruption prosecutors in courts annually.

The cases of high-level corruption need special investigation because of their complexity. Also, an absolutely essential factor is the limitation to the maximum extent of the possibilities of information leakage. To this end, the Law on Specialised Prosecution Offices provided for specialized prosecutor offices to have criminal investigation officers, investigative officers, specialists and auxiliary staff in its composition to enable these specialized prosecution offices to investigate a case from the beginning to the end efficiently. The Anti-corruption Prosecution Office continues to involve the staff from NAC due to the heavy workload and lack of sufficient own staff.

Respectively, we propose the assignment of overseeing of criminal investigation carried out by the NAC to the prosecutors of the territorial prosecution offices and the limitation of the Anti-corruption Prosecution Office's mandate only to the cases in which it conducts the criminal investigation. It is not logical to create specialized prosecution offices to investigate the cases of small-scale corruption. These cases can be investigated easily by prosecutors from territorial prosecution offices because they do not involve an increased risk for the career of prosecutors, nor justify the use of costly means to investigate them.

Besides limiting the mandate of the Anti-corruption Prosecution Office to cases of high-level corruption, this office needs to be provided with sufficient technical and materials sources in order to be able to conduct grand scale operations necessary for investigating high-level corruption cases. Regretfully, the budget of APO does not yet include special funds to be used for special investigation activities.

In addition, the Anti-corruption Prosecution Office needs to rely on the investigative officers delegated to APO when conducting special investigation activities. This conclusion derives from the logic of the institution of delegation of investigative officers from the bodies assigned expressly by law with the right to conduct special investigation activities. If this conclusion does not seem sufficiently clear from the current legislation, then the specialized prosecution offices need to be included in the

list of bodies assigned with the right to conduct special investigation activities (the Law regarding special investigation activity no. 59 of 29 March 2012).

**2) Removing from the exclusive mandate of the Anti-Corruption Prosecution Office of the duty to investigate the offences under article 190 (fraud) and 191 (embezzlement of another person's property) of the Criminal Code, if they were committed using the official position.**

*Reasons:* It is not clear why the Anti-corruption Prosecution Office should investigate the fraud or embezzlement of another person's property committed by a director of a private enterprise. These cases have nothing to do with corruption. They are quite complicated, as they require thorough checking of the business accounting records. They are also numerous. In 2017, anti-corruption prosecutors investigated 64 of such cases. Criminal investigation was initiated in 55 cases, which accounts for 12% of all cases where prosecutors have initiated criminal investigations. Out of 177 cases submitted to court, 12 cases (7%) were from this category.

The Anti-corruption Prosecution Office could investigate such offences only if they were committed in connection with a corruption offence. In this case, there is no need for a special text that would allow the Anti-corruption Prosecution Office to investigate these cases, because this power arises automatically under Art. 271 para. (8) of the Criminal Procedure Code (which provides the following: if a person has committed two or more criminal offences from among which at least one falls under the mandate of the specialised prosecution office, the criminal investigation is conducted by the specialised prosecution office).

**3) Removing from the mandate of the Anti-corruption Prosecution Office of the offence under art. 279 of the Criminal Code – terrorist financing.**

*Reasons:* Under the Law on Prosecution Service, the Prosecution Office for Combating Organized Crime and Special Cases (POCOCSC) specializes in combating organized crime, terrorism and torture. POCOCSC exercises criminal prosecution in cases that concern offences of terrorist nature. Given these powers and specialization, it would be more justifiable and appropriate to assign the investigation of offences related to terrorism to the POCOCSC rather than to the Anti-corruption Prosecution Office.

**4) Adding to the list of criminal offences under the mandate of the Anti-corruption Prosecution Office of the offence of illicit enrichment (Article 330<sup>2</sup> of the Criminal Code).**

*Reasons:* Illicit enrichment may be committed only by a special category of persons: a senior position official, a public person or a high-ranking public official. The Anti-corruption Prosecution Office has the mandate to fight high-level corruption, with a specific function related to the persons from the public domain. It would be logical that it could investigate all offences related to corruption and facts related to them committed by public officials, including illicit enrichment.

If the above-mentioned proposals are accepted, the workload of anti-corruption prosecutors should diminish significantly. For example, based on 2017 data, at least 2003 cases under proceedings in which the anti-corruption prosecutors oversee the criminal investigation and at least 55 cases related to fraud and misappropriation investigated by anti-corruption prosecutors would not be any more under their mandate.

## ANNEX: High-ranking public positions provided by the legislation in force

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:

- 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
- 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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**The Legal Resources Centre from Moldova is a not-for profit non-governmental organization based in Chişinău, Republic of Moldova. LRCM strives to ensure a qualitative, prompt and transparent delivery of justice and effective observance of civil and political rights in Moldova. In achieving these aims, LRCM combines policy research and advocacy in an independent and non-partisan manner.**

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