

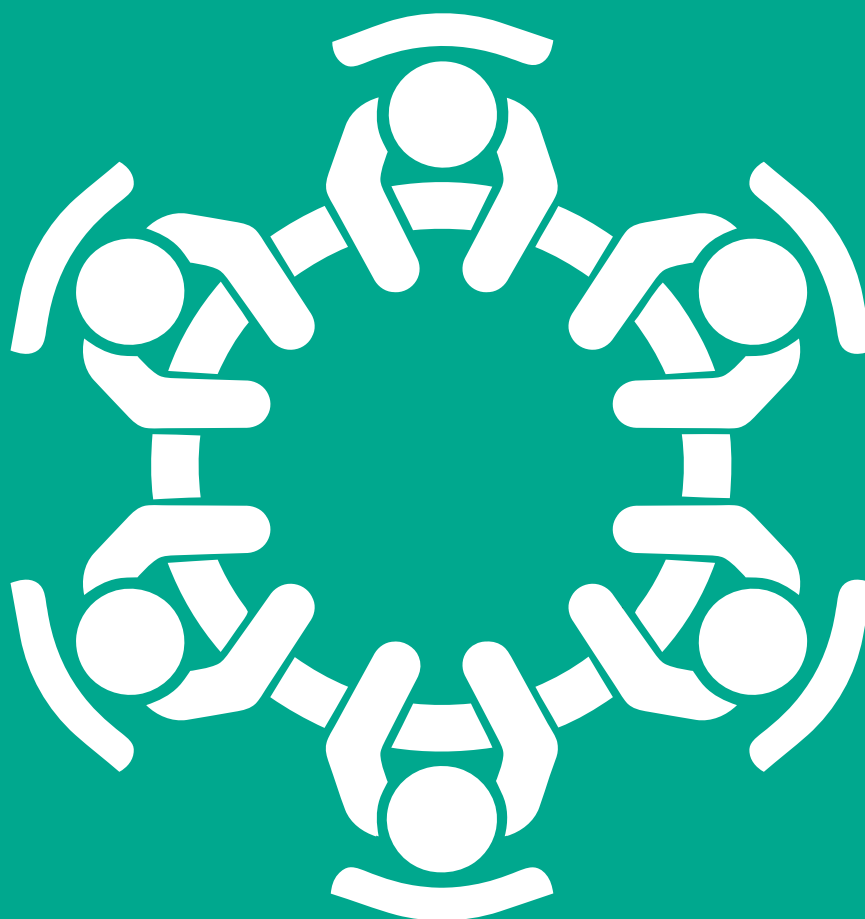
MONITORING
REPORT

FEBRUARY
2022

THE ACTIVITY OF THE INTEGRITY COUNCIL

(1 August 2016 – 31 December 2021)

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ABBREVIATIONS

NIA	– National Integrity Authority
CALM	– Congress of the Local Authorities from Moldova
IC	– Integrity Council
NIC	– National Integrity Commission (the predecessor of the NIA)
SCM	– Superior Council of the Magistracy
SCP	– Superior Council of Prosecutors
MoJ	– Ministry of Justice
NIA Law	– Law 132/2016 on the National Integrity Authority

SUMMARY

In 2016, the Parliament of the Republic of Moldova adopted the Law 132 on the National Integrity Authority (NIA Law), which laid the foundation for a new mechanism meant to ensure compliance with the integrity regimes. To ensure proper checks and balances, the NIA Law provided for the establishment of the Integrity Council (IC or Council), which would oversee the work and processes of the National Integrity Authority (NIA).

This report presents a brief overview of the Council, including its history, organization, and functioning, and describes how it worked until the end of 2021. The report highlights the Council's achievements and challenges faced by it and examines how its members have been discharging their statutory duties. The report was prepared to show the issues that prevented the Council from achieving full transparency and efficiency and to draw lessons for the new Council members who are about to take up their duties.

During the first five years of its existence, the Council's composition underwent multiple changes, six of its members having resigned. This string of resignations might have been caused by political instability or disinterest in working at this body. In late September 2021, following the responsible authorities' failure to assign new members in time, the Council became unable to function and suspended its activity. In fact, the responsible authorities failed to comply with the legal period for assigning members to the Council both in 2021 and in 2016. The institutionalization of the Council was a cumbersome process, and for two years, the Council worked rather sporadically, without a proper regulation of its organization and functioning. The Council's agenda covered over 380 subjects, but many were repetitive and carried over multiple meetings, and some were postponed for lack of information or because the rapporteur was not prepared to report.

During the reference period, the Council has initiated and promoted many policy documents necessary for the institutionalization of the NIA. However, the recruitment of management for the NIA was protracted, lasting almost one year. The recruitment of integrity inspectors was even slower. By 31 December 2021, after four years of competitions, the NIA managed to fill only 26 out of the 46 positions of integrity inspector. The most "popular" competition was the first one, which had 43 candidates, while the subsequent competitions saw a considerable decrease in the number of candidates. However, prolonged competition periods cannot be blamed exclusively on the Council or the NIA. In our opinion, Council members should be fully involved in all competition phases.

Even though the legal framework requires the NIA to have a development strategy, since its very establishment five years ago, the NIA has never had such a document. At some point, the NIA proposed one version of the strategy, but the Council did not approve it because of disagreements about its content. The Council's decisions are binding on the NIA. The main challenge for the new Council members will be finding ways to intensify talks with the NIA to have this document approved.

The Council proved to be weak in pushing for improvements in the integrity area, reacting to legislative initiatives that posed a threat to the smooth functioning of the NIA, and promoting the NIA's image. Some Council members showed a lack of commitment to their mandate at the Council. One of them had been absent at numerous meetings but somehow managed to retain the mandate, although the law allowed withdrawing it.

The NIA's management and integrity inspectors have never undergone genuine assets checks because the Council does not have access to state records. Moreover, the Council does not have its own full-time secretariat, which is another factor that considerably weakens its efficiency. The legal amendments of October 2021 strengthened the Council's role by increasing the membership of the Council and broadening its duties. However, the Council's relationship with the NIA's chairperson and deputy chairperson still needs to be clarified in practice.

During the reference period, the relationships between the NIA's management and the Council as well as between the NIA's chairperson and deputy chairperson were marked by profound dissensions and uncooperativeness, which seemed to be rather subjective (interpersonal) in nature. All interviewees described the cooperation between their institutions as unsatisfactory. These disagreements feed the public perception that the Council and the NIA are not efficient.

The report recommends avoiding confrontation between the NIA's chairperson and the new members of the Council, setting up a conciliation/mediation committee, and prioritizing the need to adopt a development strategy that would address the NIA's real needs.

INTRODUCTION

Background

On 17 June 2016, the Parliament of the Republic of Moldova adopted the Law 132 on the National Integrity Authority (NIA Law),¹ effective since 1 August 2016, which laid the foundation for a new mechanism meant to ensure compliance with the integrity regimes and strengthened the independence of the authority responsible for applying this mechanism. As a result, the former National Integrity Commission (NIC) was reorganized into the National Integrity Authority (NIA), which received new powers and resources.

To ensure proper checks and balances, the NIA Law provided for the establishment of the Integrity Council (IC or Council), which would oversee the activity and processes of the NIA. Currently, the Council is formed of nine members assigned by various national institutions. To be specific, Parliament, the President of the country, the Government, the Superior Council of the Magistracy, the Superior Council of Prosecutors, and the Congress of the Local Authorities from Moldova each assign one representative, and the Ministry of Justice assigns—through public competition—three representatives of the civil society, to the Council.²

This report examines the transparency and efficiency of the Council and draws its conclusions and findings from the observation of approximately 80 meetings (76% of all meetings) during the monitoring carried out from December 2016 through December 2021.

¹ Law 132 of 17 June 2016 on the National Integrity Authority (Official Gazette of the Republic of Moldova, 2016, 245 – 246, Article 511), available at https://www.legis.md/cautare/getResults?doc_id=94148&lang=ro

² Until 29 October 2021, the Council was formed of seven members. After that, the law was amended to add two more members—one assigned by the President of the republic, and one as a second civil society representative. The analysis and most information presented in this report are based on the laws as in force before those amendments.

The report highlights the Council's achievements and challenges and examines how the members of the Council have been discharging their duties under the NIA Law and the Regulation on the organization and functioning of the IC.³ The report is addressed mainly to relevant public authorities, the current Council members, and those who are about to be assigned, offering them a series of public policy recommendations.

Methodology

The analysis in this report is based on the observation of the meetings of the Council, including the preliminary examination of their agendas and materials, the analysis of activity reports, communiqués, and decisions produced by the Council, communiqués published by the NIA, and resolved agenda items.

The monitoring of the Council involved the direct observation of its online meetings, which were usually held once or several times a month. The analysis of transparency at the Council, including in its decision-making, involved the preliminary examination of meeting agendas and materials retrieved from the NIA's website and the observation of the participation of Council members. The efficiency of the Council was assessed considering the decisions and relevant recommendations produced by it.

The research was based on the following methods:

- Desktop research. We used official documents (reports, decisions of the Council, regulations, etc.) and specialized studies, including previous assessments, to collect information.
- Interviews. We conducted four semi-structured interviews with Council representatives and the NIA's management in November and December 2021. We interviewed three Council members (one who had served three years and a half before resigning, one who had served the full five-year term, and one who is still serving) and the NIA's chairperson.

The observation of the meetings was carried out by the LRCM team, and the analysis was prepared by the LRCM's legal officer Daniel GOINIC during January - February 2022.

The draft of the report and its main findings were presented on 22 February 2022 at a public consultation that gathered professionals in this field.⁴ This report represents the result of that consultation, which validated its final recommendations.

Acknowledgments

We express our gratitude and sincere thanks to Council members Oleg EFRIM, Mariana TIMOTIN, and Viorel RUSU as well as to NIA Chairperson Rodica ANTOCI for making themselves available for the interviews and talking openly about their professional challenges and experiences.

³ Regulation on the organization and functioning of the Integrity Council, approved by IC Decision no. 1 of 24 January 2019, available at <https://ani.md/sites/default/files/Regulament%20CI.PDF>

⁴ Consultation event that marked the production of the draft monitoring report, 22 February 2022, available at <https://www.privesc.eu/Arhiva/98304/Lansarea-Raportului--Transparenta-si-eficienta-activitatii-Consiliului-de-Integritate--2016-2021>

THE ROLE AND STRUCTURE OF THE INTEGRITY COUNCIL

During the reference period, the Council was formed of seven members assigned by various national institutions. Starting from October 2021, the Council is formed of nine members, namely six representatives of whom each one is assigned by either Parliament, the President of the country, the Government, the Superior Council of the Magistracy (SCM), the Superior Council of Prosecutors (SCP), or the Congress of the Local Authorities from Moldova (CALM) and three representatives for civil society assigned through public competition by the justice minister.⁵ The Council members do not have the status of full-time employees and are paid on a per-meeting basis.

Article 12 of the NIA Law regulates the establishment and functioning of the Council, but it is not explicit about its role. The Council members have defined it as a representative body that operates through meetings.⁶ The NIA's website defines the Council as a collective consultative body that is not a component part of the NIA.⁷

Debates about the Council's place in the NIA's organizational structure go as far back as June 2018.⁸ They appeared because the NIA Law is not explicit about this aspect. On the one hand, section 1 of the law (NIA's Structure and Management) regulates not only the conditions for taking the office of chairperson and deputy chairperson of the NIA, but also for becoming a Council member. On the other hand, Article 9 of the law states that the NIA is run by a chairperson, who is assisted by a deputy chairperson. This may be interpreted as meaning that only the NIA's chairperson and deputy chairperson—rather than the Council—constitute the management of the institution.

“The Council can't be the management but is rather a guarantor for the NIA. The Council oversees the NIA and represents it before outside actors.”

(Interview with NIA Chairperson Rodica ANTOCI—December 2021)

“The Council's role is as it is. We should either remove it or make it part of the institution.”

The Council's authority should be clearly defined.”

(Interview with a former member of the Council—November 2021)

5 Until 29 October 2021, the Council was formed of seven members. After that, the law was amended to add two more members—one assigned by the President of the republic and another representing civil society. The analysis and compilation of most information presented in this report are based on the laws as they were before these amendments.

6 Regulation on the organization and functioning of the Integrity Council, approved by IC Decision no. 1 of 24 January 2019, available at <https://ani.md/sites/default/files/Regulament%20CI.PDF>

7 “The Area of the Integrity Council,” available at <https://ani.md/ro/node/103> (accessed on 10 January 2022)

8 NIA, communiqué, The Council proposed two important documents for debates, available at <https://www.ani.md/ro/node/346> (accessed on 10 January 2022).

The uncertainty around the role and duties of the Council also came to the attention of experts of the Council of Europe, who examined the legal framework, internal procedures, and efficiency of the NIA in early 2021 and stressed, among other things, the need to clarify the role and relevance of the Council as the current arrangement seemed unproductive and hindered the efficiency of both the Council and the NIA.⁹

By the legal amendments of October 2021, Parliament strengthened the Council's role by increasing the membership of the Council and broadening its powers (e.g., to establish contraventions committed by the management of the NIA and integrity inspectors, to dismiss the NIA's management, to approve the organizational structure and the internal regulations of the NIA, etc.).

The October 2021 amendments strengthen the Council's role, at least as far as the oversight of the NIA is concerned. Empowered to sanction or dismiss the NIA's management for deficient performance, the Council becomes more like a supreme managing body for the NIA. That said, having this role enshrined in the law is still a necessity for both the Council and the NIA's management.

THE ACTIVITY OF THE INTEGRITY COUNCIL

The History of the Integrity Council

The mandate of Council member has a five-year term and cannot be renewed for another consecutive term. If the mandate is terminated ahead of time, the relevant entities must assign a new representative to the Council within 20 working days. The Council member whose mandate has expired stays in office until the appointment of a successor.

The Council started working on 30 December 2016,¹⁰ approximately six months after the enactment of the law, when all responsible entities had assigned their representatives to it. In accordance with Article 44 (2) of the NIA Law, Council members were to be assigned within one month of the law being published. Such a short period was dictated by the need to appoint the chairperson and deputy chairperson of the NIA.

The members were assigned at long intervals as follows:

- On 11 August 2016, the SCP assigned its representative.¹¹
- On 6 September 2016, the SCM assigned its representative.¹²
- On 9 September 2016, CALM assigned its representative.¹³

9 IC, Minutes no. 1, available at <http://ani.md/sites/default/files/documente/PV-1%20din%2030.12.2016.doc> (accessed on 17 January 2022)

10 IC, Minutes no. 1, available at <http://ani.md/sites/default/files/documente/PV-1%20din%2030.12.2016.doc> (accessed on 17 January 2022)

11 SCP Decision 12-221/16 of 11 August 2016 on the assignment of Mr. Mircea ROȘIORU, available at <http://www.procuratura.md/file/221%20desemnare%20reprezentant%20in%20ANI.pdf>

12 SCM Decision 559/23 of 6 September 2016 on the assignment of Mr. Victor MICU, available at <http://csm.md/files/Hotaririle/2016/23/559-23.pdf>

13 CALM's notification on the assignment of Mr. Viorel RUSU, available at <https://bit.ly/3fvBIQW> (accessed on 17 January 2022)

- On 22 December 2016, Parliament assigned its representative.¹⁴
- On 27 December 2016, the MoJ assigned two representatives for civil society.¹⁵
- On 28 December 2016, the Government assigned its representative.¹⁶

The SCP was the only authority that complied with the legally prescribed period. The other four of the seven Council members were assigned with a delay of one to three months. The Council held its first meeting on 30 December 2016, five months after its establishment. Had the responsible institutions assigned their representatives in time, the procedures could have been shorter.

The first membership of the Council has gone through considerable changes due to the resignation of some of its members.

- On 31 May 2017, the mandate of the Council member for the Government was terminated following her resignation.¹⁷ On 28 June 2017, the Government assigned a new representative,¹⁸ but his mandate was also terminated on 18 January 2021 due to resignation.¹⁹
- On 11 June 2019, the mandate of a Council member for civil society was terminated following her resignation.²⁰
- On 30 July 2019, the mandate the Council member for the SCM was terminated following his resignation and the SCM assigned another representative.²¹ On 10 December 2019, the mandate of this member was also terminated following his resignation.²²
- On 24 February 2020, the mandate of the second civil society representative was terminated following his resignation.²³

This string of resignations seems to have been caused by political instability, the termination of membership at the organization that had assigned the person to the Council, or disinterest in working at this body. Only the members assigned by Parliament, the SCP, and CALM completed their term.

14 Parliament Decision 306 of 22 December 2016 on the assignment of Mr. Serghei OSTAF, available at https://www.legis.md/cautare/getResults?doc_id=96872&lang=ro

15 MoJ Order on the assignment of Mr. Dumitru ȚÎRA and Ms. Tatiana PAȘCOVSCHI, available at <http://www.justice.gov.md/libview.php?l=ro&idc=4&id=3290> (accessed on 17 January 2022)

16 Government Decision 1422 of 28 December 2016 on the assignment of Ms. Victoria IFTODI, available at https://www.legis.md/cautare/getResults?doc_id=96933&lang=ro

17 Government Decision 358 of 31 May 2017 on the termination of the mandate of a member of the Integrity Council, available at https://www.legis.md/cautare/getResults?doc_id=99920&lang=ro

18 Government Decision 475 of 28 June 2017 on the assignment of Mr. Oleg EFRIM, available at https://www.legis.md/cautare/getResults?doc_id=99528&lang=ro

19 "Consiliul rămâne cu 5 membri din 7, după ce Oleg EFRIM a anunțat că renunță la mandat," available at <https://www.moldovacurata.md/consiliul-de-integritate-al-ani-ramane-cu-5-membri-din-7-dupa-ce-oleg-efrim-a-anuntat-ca-renunta-la-mandat-1-2437> (accessed on 17 January 2022)

20 MoJ Order 191 of 18 July 2019 on the withdrawal of Ms. Tatiana PAȘCOVSCHI from the Integrity Council

21 SCM Decision 307/18 of 30 July 2019 on the termination of the mandate of Mr. Victor MICU and the assignment of Mr. Ion POSTU, available at <https://www.csm.md/files/Hotaririle/2019/18/307-18.pdf>

22 SCM Decision 424/31 of 10 December 2019 on the termination of the mandate of SCM member and, consequently, Council member of Mr. Ion POSTU, available at <https://www.csm.md/files/Hotaririle/2019/31/424-31.pdf>

23 "Dumitru Țira demisionează din funcția de membru al Consiliului de Integritate al ANI," available at <https://www.zdg.md/stiri/stiri-sociale/dumitru-tira-demisioneaza-din-functia-de-membru-al-consiliului-de-integritate-al-ani/> (accessed on 17 January 2022)

The mandate of the first member for CALM ended after the expiry of the five-year term in September 2021. After that, since other institutions had not assigned their representatives, the Council became unable to function for lack of quorum and halted its work.²⁴ Meanwhile, on 22 December 2021, Parliament's representative also completed their mandate.

Under the law, in case of an early termination of the mandate, the concerned entities must assign a new representative to the Council within 20 working days. The table below shows that only the SCM complied with this legal requirement, whereas the Government and the MoJ breached it when it was their turn to assign representatives to the Council. At the time of preparing this report, the Council had been unable to function for more than five months.

Table 1. The assignment of Council members by relevant institutions

Assigning institution/organization	Assignment date	Termination of the mandate	Assignment date	Termination of the mandate	Assignment date	Deadline
Parliament	Serghei OSTAF, 22 December 2016	22 December 2021 (the completion of the term)	-			Breached (by 31 December 2021, the assignment procedure had not been initiated)
Government	Victoria IFTODI, 28 December 2016	31 May 2017 (resignation)	Oleg EFRIM, 28 June 2017	18 ianuarie 2021 (cerere de demisie)	Alexandru COICA, 26 ianuarie 2022	Breached (by 31 December 2021, the assignment procedure had not been initiated)
SCM	Victor Micu, 6 September 2016	30 July 2019 (resignation)	Ion POSTU, 30 July 2019	10 Decembrie 2019 (cerere de demisie)	Mariana TIMOTIN, 10 decembrie 2019	The mandate ends on 10 December 2024
SCP	Mircea Roşioru, 11 August 2016	11 August 2021 (the completion of the term)	Mariana GORNEA, 17 August 2021			The mandate ends on 17 August 2026
CALM	Viorel RUSU, 9 September 2016	30 September 2021 (the completion of the term)	-			Breached (on 31 December 2021, no information about the assignment was available)
MoJ, civil society 1	Tatiana PAŞCOVSCHI, 27 December 2016	11 June 2019 (resignation)	Vitalie PALEGA, 23 December 2019			The mandate ends on 23 December 2024
MoJ, civil society 2	Dumitru ȚÎRA, 27 December 2016	24 February 2020 (resignation)	Ilie CHIRTOACĂ, 26 January 2022			Breached Breached (on 31 December 2021, the competition was underway) ²⁵

²⁴ Statement of the Integrity Council, available at <https://ani.md/ro/node/1994> (accessed on 17 January 2022)

²⁵ MoJ, information about the competition for Council member, available at <http://www.justice.gov.md/libview.php?l=ro&idc=4&id=5533> (accessed on 18 January 2022)

MoJ, civil society 3 (introduced through the October 2021 amendments)	-					Breached (on 31 December 2021)
President of the country (introduced through the October 2021 amendments)	Tatiana TABUNCIC, 4 February 2022					Breached (on 31 December 2021, no information about the assignment was available)

Source: Decisions adopted by the institutions responsible for assigning Council members from August 2016 through December 2021. The data was processed by the LRCM.

The current membership of the Council was formed as follows:

- On 10 December 2019, the SCM assigned its new representative to the Council.²⁶
- Almost half a year later, on 23 December 2019, the MoJ assigned a representative for civil society.²⁷
- On 17 August 2021, the SCP assigned its representative after the end of the mandate of the previous representative.²⁸
- At a one-year interval, on 26 January 2022, the Government assigned its representative to the Council.²⁹
- Also on 26 January 2022, the MoJ assigned the second representative for civil society through competition.³⁰ One position remains vacant because other candidates did not qualify.
- On 4 February 2022, the Presidency assigned its representative.³¹

The transitional provisions to the October 2021 amendments stipulate that the President of Moldova and the MoJ must assign members to the Council within one month of the amendments becoming effective, that is, until 29 November 2021. The Presidency assigned its representative to the Council on 4 February 2022, whereas the MoJ assigned only one of the two Council members on 26 January 2022. By the date of the release of this report, Parliament, CALM, and the MoJ (the latter following the October 2021 amendments) had not yet assigned their representatives to the Council.

26 SCM Decision 428/31 of 10 December 2019 on the assignment of Ms. Mariana TIMOTIN, available at <https://ani.md/sites/default/files/HotTimotin.pdf>

27 MoJ Order 338 of 23 December 2019 on the assignment of Mr. Vitalie PALEGA, available at <https://ani.md/sites/default/files/Ordin%20Palega.PDF>

28 SCP Decision 1-83/2021 of 17 August 2021 on the assignment of Ms. Mariana GORNEA, available at <http://www.csp.md/sites/default/files/2021-10/83.%20Hot.%20desemnarea%20membru%20Consiliu%20de%20Integritate.pdf>

29 Government Order 18-d of 26 January 2022 on the assignment of Mr. Alexandru COICA as Council member

30 Decision of 26 January 2022 of the MoJ’s Competition Committee on the selection of Mr. Ilie CHIRTOACĂ as the winner of the competition for Council member representing civil society, available at http://justice.gov.md/public/files/Concurs_membr_i_CI.pdf

31 Decree 340 of 4 February 2022 of the President of the Republic of Moldova on the assignment of Ms. Tatiana TABUNCIC, available at <https://presedinte.md/app/webroot/Decrete/340.pdf>

The above observations show that the assigning authorities failed to act promptly in 2021, just as they did in 2016. In fact, their inaction has dragged out the formation of the Council and the appointment of management for the NIA.

To ensure the Council is functional, it is highly recommended that Parliament, the MoJ, and CALM urgently assign their representatives to the Council. The new Council members convened for the first time on 18 February 2022.

The Recruitment of Management for the NIA

The Council has the following basic duties related to the appointment of the NIA's management (in accordance with the law effective in 2016):

- **Approves the Regulation on the competition** for chairperson and deputy chairperson of the NIA; approves the themes for the competition and the composition of the committees responsible for organizing the competition, preparing its subjects, checking test papers, and resolving challenges.
- **Organizes the competition** for chairperson and deputy chairperson.
- **Validates the results of the competition** for chairperson and deputy chairperson and publishes them on the NIA's website within 24 hours of the validation.

The approval of the Regulation on the competition for chairperson and deputy chairperson

On 30 December 2016, the Council convened in its first meeting. On 17 January 2017, the Council announced public debates about the Regulation on the competition for chairperson and deputy chairperson of the NIA (the Regulation).³² In January and February 2017, the Council had seven meetings dedicated mainly to this Regulation.

On 20 February 2017, the Council adopted the Regulation by a unanimous vote. On 28 February 2017, several CSOs sent Council members a statement expressing concerns about the evaluation criteria applied to candidates for the NIA's management and the Council's failure to comply with the legal requirements concerning the transparency of decision-making.³³ Despite these concerns, the Regulation was not revised.

³² NIA, communiqué, available at <https://ani.md/ro/node/46> (accessed on 19 January 2022)

³³ Statement on the development of the rules for electing the chairperson and deputy chairperson of the NIA, available at http://crjm.org/wp-content/uploads/2017/02/2017-02-28-Declara%C8%9Bie_activitatea-Consiliului-de-Integritate-fin.pdf

The organization of the competition for chairperson and deputy chairperson and the validation of its results

On 20 February 2017, as soon as the Regulation was approved, the Council set up three competition committees—one for the written test, one for the interview, and one for resolving challenges—and approved their composition.

On 7 April 2017, the Regulation went out in the Official Gazette³⁴ and the Council announced the competition for chairperson and deputy chairperson of the NIA, setting 3 May 2017 as the application deadline.³⁵ Four persons applied. The candidates were screened by the Intelligence and Security Service (ISS).³⁶ However, the Council discussed the ISS' answer only after three months, at the meeting of 3 July 2017. The ISS did not mention whether any of the candidates for the chairperson or deputy chairperson of the NIA had worked for it as an intelligence operative or undercover agent, despite NIA Law requiring it to do so under Article 11 (4). The ISS explained that the law prohibited declassifying the requested information. To unblock the competition procedure, the Council informed Parliament, the Government, and the MoJ about the legal issues with the competition procedure and requested an urgent amendment of the law to enable the competition to proceed.³⁷

At its meeting of 31 July 2017, the Council announced the ISS' answer that none of the candidates had worked for intelligence services as an intelligence operative or undercover agent. At the same meeting, the members discussed the candidacies registered for the competition. The Council found that only one candidate had applied in line with the Regulation of 20 February 2017. As a result, the process was dragged out, which could have been avoided if the NIA's secretariat had verified the compliance of the applications on their submission on 3 May 2017. The competition was extended by ten days, but no new applications came in. The same candidates remained after adjusting their applications in accordance with the requirements of the Regulation.

a) The first competition for chairperson of the NIA

La 4 septembrie 2017, membrii CI au examinat dosarele celor patru candidați și au constatat că toți patru au depus candidaturile pentru funcția de președinte, iar doi dintre aceștia candidau și pentru funcția de vicepreședinte al ANI. Ulterior CI a exclus din concurs un candidat care aspira la funcția de președinte ANI având în vedere un presupus conflict de interese³⁸.

34 Regulation on the organization and carrying out of the competition for chairperson and deputy chairperson of the NIA, available at https://www.legis.md/cautare/getResults?doc_id=115500&lang=ro

35 NIA, communiqué "Consiliul a lansat concursul de selectare a conducerii ANI," available at <https://ani.md/ro/node/180>

36 NIA, communiqué "Peste 15 zile vor fi cunoscuți candidații pentru șefia ANI, care vor intra în concurs," available at <https://ani.md/ro/node/186> (accessed on 3 February 2022)

37 NIA, communiqué "Membrii Consiliului vor solicita Parlamentului, Guvernului și Ministerului Justiției să deblocheze procedura de concurs pentru alegerea conducerii ANI," available at <https://ani.md/ro/node/192> (accessed on 3 February 2022)

38 La 12 septembrie 2017, CI a decis excluderea din concurs a candidatului Anatolie DONCIU - fost președinte al Comisiei Naționale de Integritate (CNI) între anii 2012-2016 - atât pentru funcția de președinte, cât și de vicepreședinte al ANI, motivul fiind că anterior acesta s-a aflat în conflict de interese și nu l-a soluționat. Astfel, dl Donciu a examinat, în calitate de președinte al CNI, cazul unei persoane care era șef de direcție al Centrului Național Anticorupție și totodată șeful fiului său.

The written test was held on 21 September 2017 with only two candidates, since the third one had withdrawn his candidacy for chairperson. He had maintained, however, his candidacy for deputy chairperson. On 26 September 2017, the Council held the interviews. On 9 October 2017, the Council announced that both candidates for chairperson of the NIA had failed the lie detector test.³⁹ Under the legal procedures effective at the time, only the candidates who successfully passed the lie detector test were admitted into the competition validation phase. As a result, the Council announced a new competition for chairperson of the NIA.⁴⁰

b) The second competition for chairperson of the NIA

On 13 October 2017, the Council announced the new competition for chairperson of the NIA open for application until 6 November 2017. On 27 November 2017, having examined the three submitted applications and the ISS' note on the candidates' background, the Council found that they all qualified for the competition. After the written test and the interview, candidate Rodica ANTOCI gained the highest score. On 22 December 2017, the Council announced that Ms. Rodica ANTOCI had successfully passed the lie detector test and nominated her for appointment as the NIA's chairperson by the President of the country. The President of the country signed the decree concerning her appointment on 29 December 2017.⁴¹

c) The competition for deputy chairperson of the NIA

The competition for deputy chairperson of the NIA was announced along with the competition for chairperson, on 7 April 2017. On 31 July 2017, the Council extended the competition period. On 4 September 2017, the Council examined the two submitted applications. The written test of the competition for deputy chairperson took place on 30 October, and the interview, on 6 November 2017. At the meeting of 13 November 2017, the Council announced the results of the competition tests and that one candidate had withdrawn.⁴² On 6 December 2017, the Council examined the results of the lie detector test and validated the competition results, nominating Mr. Lilian CHIȘCĂ for appointment as the NIA's deputy chairperson by the President of the country. The decree on his appointment was signed on 22 December 2017.⁴³

As highlighted above, the process of appointing the chairperson and deputy chairperson of the NIA was protracted, lasting for almost one year, despite the law setting only a few months for it (three months, if the time frames required under Article 11 of the NIA Law as effective in 2016 are included). Due to the fewness of the submitted applications and of the candidates remained in the competition after certain phases, the application deadline was put off to a later date. Moreover, a new competition was announced for chairperson after the candidates failed the lie detector test (polygraph).

39 IC Decision no. 6 of 9 October 2017 on the results of the lie detector (polygraph) test, available at <https://www.ani.md/sites/default/files/documente/Hotarire.pdf>

40 NIA, communiqué "Consiliul anunță un nou concurs pentru funcția de președinte al ANI," available at <https://ani.md/ro/node/217> (accessed on 3 February 2022)

41 Decree 543 of 29 December 2017 on the appointment of Ms. Rodica ANTOCI as the NIA's chairperson, available at https://www.legis.md/cautare/getResults?doc_id=107277&lang=ro

42 NIA, communiqué "Candidatul pentru funcția de vicepreședinte al ANI urmează să fie testat la poligraf," available at <https://ani.md/ro/node/238> (accessed on 3 February 2022)

43 Decree 507 of 21 December 2017 on the appointment of Mr. Lilian CHIȘCĂ as the NIA's deputy chairperson, available at https://www.legis.md/cautare/getResults?doc_id=107233&lang=ro

On 10 April 2018, the Constitutional Court declared the legal provisions that required the successful passing of the lie detector test for candidates for the NIA's chairperson or deputy chairperson unconstitutional.⁴⁴ As a result, the successful passing of the lie detector test is no longer a mandatory condition for getting hired but just one of the candidate evaluation criteria.

The prolonged competition period of approximately one year may not be blamed exclusively on the Council. Nevertheless, some red tape issues, such as the compliance check on documents upon their submission, the tracking and consultation of the draft versions of the Regulation and the proposals approved by the Council, etc., could have been avoided.

Considering the change in the procedure for selecting the deputy chairperson of the NIA, who will be nominated by the winner of the competition for chairperson of the NIA starting with 2021, the hiring of the new management of the NIA, scheduled for 2022, is expected to be faster.

The Approval of Main Policy Documents

Until October 2021, the Council had the following basic duties related to the approval of main policy documents:

- Approves the regulations on the organization and functioning of the Council and the Disciplinary Board and the internal rules of conduct and ethics for the NIA.
- Approves the strategy and the work plan for the NIA.

The approval of the Regulation on the organization and functioning of the Council

The development and approval of the Regulation on the organization and functioning of the Council (the Regulation) was a prolonged process.

First, the Council set up a working group that studied the national and Romanian legal frameworks. The first draft of the Regulation was discussed at the meeting of the Council held on 13 March 2017. The second draft of the Regulation was presented at the meeting held on 22 May 2017.⁴⁵ The final version was published for public consultation only in December 2017.

The Council examined the draft by chapters at seven meetings during 2018. On 18 June 2018, the Regulation was published on the website once again, for another consultation round.⁴⁶ Eventually, the Council approved the Regulation on 24 January 2019. On 19 July 2021, the Regulation underwent a series of minor amendments.⁴⁷

⁴⁴ Judgment 6 of 10 April 2018 on the challenge to the constitutionality of some provisions of Law 269 of 12 December 2008 on tests with a lie detector (polygraph) and Law 132 of 17 June 2016 on the National Integrity Authority (lie detector test), available at <https://constcourt.md/ccdocview.php?tip=hotariri&docid=652&l=ro?tip=hotariri&docid=652&l=ro>

⁴⁵ IC, activity report for 2017 and 2018, available at <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fani.md%2Fsites%2Fdefault%2Ffiles%2FRaport%2520de%2520activitate%2520pe%25202%2520ani%25202017-2018%25204.03.3019%2520T.docx&wdOrigin=BROWSELINK>

⁴⁶ NIA, web directory "Decision-making Transparency," accessible at <https://ani.md/ro/node/324>

⁴⁷ IC Decision no. 11 of 19 July 2021 for the amendment of the Regulation on the Council, available at <https://www.ani.md/sites/default/files/HCI%2011%20din%2019.07.21.PDF>

Some interviewed Council members said that adopting the internal regulatory framework for the Council was an achievement, which is undeniably true. However, from its establishment, the Council has worked for over two years without a regulation concerning its functioning and organization. This was bound to impact its work. Before the adoption of the Regulation, the Council often postponed its meetings because of a lack of quorum or the procrastination of important decisions concerning other policy documents required for the institutionalization of the NIA or the recruitment of its management and integrity inspectors.

The approval of the Regulation on the functioning of the Disciplinary Board

During August and September 2017, the Legal Directorate of the NIA developed the draft Regulation on the functioning of the Disciplinary Board. After that, it submitted the Regulation to the Council for examination.⁴⁸ Since such draft must be agreed with the NIA's management, the examination and approval of the Regulation were suspended until the appointment of the NIA's management in December 2017.

After the appointment of the NIA's management, the Regulation on the functioning of the Disciplinary Board was put out for consultation at the proposal of the Council. The Regulation was approved after more than one year, on 15 April 2019.⁴⁹ The Disciplinary Board's membership included two standing and two alternate members for the Council (the former two for the SCP and, respectively, the SCM and the latter two, for CALM and, respectively, civil society).⁵⁰ According to the latest reports, during Quarter I of 2021, the Board examined three complaints. No disciplinary sanctions were applied.⁵¹

The approval of the NIA's strategy and work plan

Work on the draft of the NIA's development strategy (the Strategy) started in February 2018 with support from the Chişinău Office of the Council of Europe. In September 2018 a draft of the strategy was put out for broad public consultation.⁵² However, the NIA has not adopted a final strategy up to this date.

In 2019, the NIA "took a break" to refine the initial draft and submitted it to the Council for approval only in November 2020.⁵³ The Council decided that the draft report presented to it in 2020 (that is the 2018 draft prepared with assistance from the development partners) was out of date and asked the NIA to bring the document up to date with the new realities. Meanwhile, some Council members prepared an alternative version of the strategy.

48 IC, activity report for 2017 and 2018, op. cit.

49 IC Decision no. 7 of 15 April 2019 on the organization and functioning of the Disciplinary Board, available at <https://www.ani.md/sites/default/files/1.%20%20Regulam%20Colegiul%20disciplinar%20-Final.pdf>

50 See IC Decision no. 8 of 15 April 2019 or IC Decision no. 11 of 9 September 2019

51 IC, Minutes 15 of 2 August 2021, available at <https://www.ani.md/sites/default/files/PV%2015%20din%2002.08.2021.PDF>

52 NIA, communiqué "Responsabilitate instituțională pentru promovarea integrității," available at <https://ani.md/ro/node/396> (accessed on 20 January 2022)

53 IC, Minutes 10 of 9 November 2020, available at <https://www.ani.md/sites/default/files/PV-10%20din%2009.11.2020.pdf>

The debates about the strategy continued during 2021. Along this process, the NIA's management and the Council found themselves in opposing camps, arguing that the other side's proposals are either insufficient, irrelevant, or difficult to implement.⁵⁴ From January 2021 through June 2021, the NIA and the Council established several joint working groups,⁵⁵ but the final version of the strategy is still beyond the horizon.

“The strategy was not adopted because the NIA did not respect some simple requirements that apply to a policy document. The Council wants a results-oriented strategy.”

(Interview with a member of the Council—December 2021)

From its establishment through the end of 2021, the NIA has been working without a development strategy. The NIA seems to be the only national institution working in this way, even though the legal framework requires it to have a strategy.

As for the NIA's Action Plan, the Council adopted the latest one in June 2020 with several recommendations and amendments, such as the recommendation to have it submitted along with the NIA's annual budget, which should include the Council's financial needs.⁵⁶

One of the basic duties of the Council is adopting internal documents necessary for the work of the NIA (the annual report, the strategy, the action plan, etc.). However, so far it has not adopted some of these documents or has adopted them with delays. The Council has some leeway in deciding whether to adopt a policy document, and the law allows it to do so. In case of the strategy, the Council has informed the NIA that the document needed improvements or changes, but the NIA's management has not always heeded the Council's opinions and requests.

These dissensions between the Council and the NIA's management are just another sign that all stakeholders need to agree on the status and role of the Council, including in light of the legal amendments of October 2021. It is worth reminding that the Council's decisions are binding on the NIA's management. This report recommends intensifying talks between the NIA's management and the new Council members to identify challenges related to the NIA's institutional development strategy and its final approval.

The Facilitation of the Recruitment of Integrity Inspectors

The approval of the Regulation on the recruitment of integrity inspectors

In 2017, the NIA developed the draft Regulation on the recruitment of integrity inspectors with assistance from some Council members and civil society. The entire process of developing, subjecting to public consultation, and drafting the final version took approximately one year.

⁵⁴ IC, Minutes 17 of 20 September 2021, available at https://www.ani.md/sites/default/files/proces_verbal17.pdf

⁵⁵ IC Decision no. 10 of 28 June 2021 on the Action Plan proposed by the Council and the Institutional Development Strategy of the NIA, available at <https://www.ani.md/sites/default/files/HCI%2010%20din%2028.06.2021%20.PDF>

⁵⁶ IC Decision no. 8 of 9 June 2020 on the approval of the Work Plan of the National Integrity Authority for 2020, available at <https://www.ani.md/sites/default/files/HCI%20nr.8%20din%2009.06.2020.pdf>

On 21 February 2018, the Council approved the Regulation on the competition for the recruitment of integrity inspectors.⁵⁷ The practice of applying the Regulation revealed a series of issues (lack of time frames and procedures that would apply to the recruitment committee after the receipt of the integrity records issued by the National Anticorruption Center or the ISS' note).⁵⁸ Some of these issues appeared as the result of recent developments, such as the organization of the competition during the pandemic. These challenges determined the Council to start lengthy talks that continued from 2019 through 2021 to improve the Regulation. Many of these talks did not lead to a subsequent amendment of the act.

Participation in the recruitment of integrity inspectors, and oversight of the recruitment process

The procedure for recruiting integrity inspectors is lengthy and contains many phases (the examination of the application, the written test, the interview, the lie detector test, additional screening by the ISS, etc.).

The competition committee is formed of five members: the chairperson and deputy chairperson of the NIA, two officers from the NIA's apparatus, and two representatives of the Council.⁵⁹ According to an earlier assessment, during the first five completed competitions, the committee invariably included the NIA's chairperson and the chief of a directorate of the NIA. The persons holding the other three member positions varied. Considering that, as with any competition, especially during the interview, the recruitment committee is always somewhat subjective, the rotation of its members could lend more impartiality to the recruitment of integrity inspectors.⁶⁰ In addition, the delegation of Council members to this committee in rotation would automatically balance the distribution of workload between them.

During the interviews, several interviewees said that the competition requirements to candidates for inspector were very strict, which deterred people from applying (for example, because of uncertainty about the results of the lie detector test.)

On the other hand, the current management of the NIA considers that the competition committee must involve a broader or even plenary participation of incumbent integrity inspectors.

“The problem lies in candidates’ performance rather than in the NIA or the Council.

We need to reconsider the requirements for becoming an inspector.”

(Interview with a member of the Council—December 2021)

57 Regulation on the competition for the recruitment of integrity inspectors approved by Decision 2 of 21 February 2018, available at https://www.legis.md/cautare/getResults?doc_id=115493&lang=ro#

58 IC Decision no. 5 of 13 August 2018 on the amendment of the Regulation on the competition for the recruitment of integrity inspectors

59 See CI Decision no. 10 of 9 September 2019, available at <https://www.ani.md/sites/default/files/Hot%20CI-10%20din%2009.09.2019%20repr%20CI%20C3%AE%20Comisia%20de%20Concurs.pdf>.

60 Independent Press Association, Raport nr. 1 de Monitorizare a eficienței sistemului național de control al averilor și intereselor persoanelor cu funcții publice și a activității ANI, 2019, p. 30, available at <http://www.api.md/news/view/ro-api-prezinta-un-raport-de-monitorizare-a-eficientei-sistemului-national-de-integritate-si-a-activitatii-autoritatii-nationale-de-integritate-ani-2086>

From January 2018 (when the NIA’s management took office) until 31 December 2021 there were ten competitions for integrity inspectors, the last of which is still underway (for more information, see Appendix no. 2). In accordance with the final and transitional provisions of the NIA Law, the first competition was to be held one month after the appointment of the NIA’s chairperson. In reality, it was announced four months afterward⁶¹ because of the delay with the adoption of the Regulation on the organization of the competition for the recruitment of integrity inspectors.

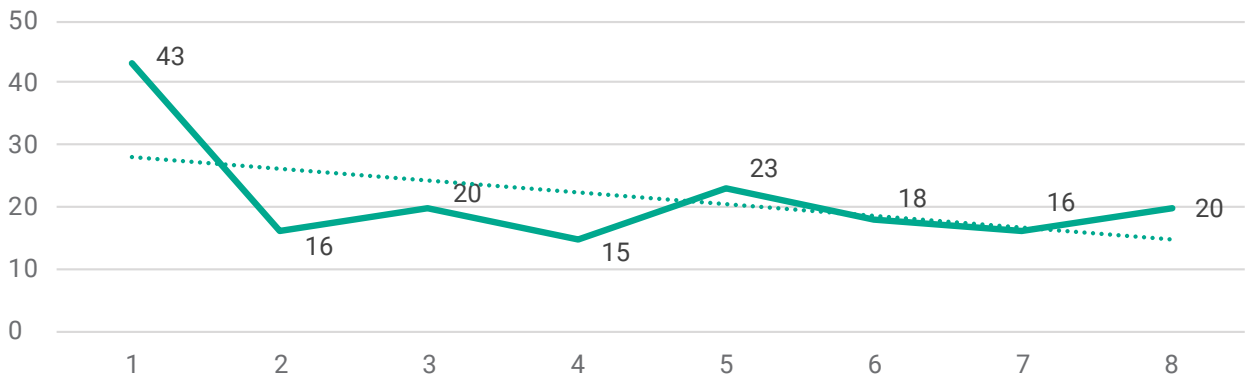
“The competition committee must be formed of integrity inspectors. The priority for the future is to abandon the written test and to introduce an interview with practical questions for candidates.”

(Interview with the NIA’s chairperson – December 2021)

All competitions for the recruitment of integrity inspectors progress very slowly. On average, it takes 116 days (almost four months) to go from the announcement of the competition until the investiture as integrity inspector. The shortest competition took 60 days, and the longest, 213 (its progress was likely impacted by the pandemic).

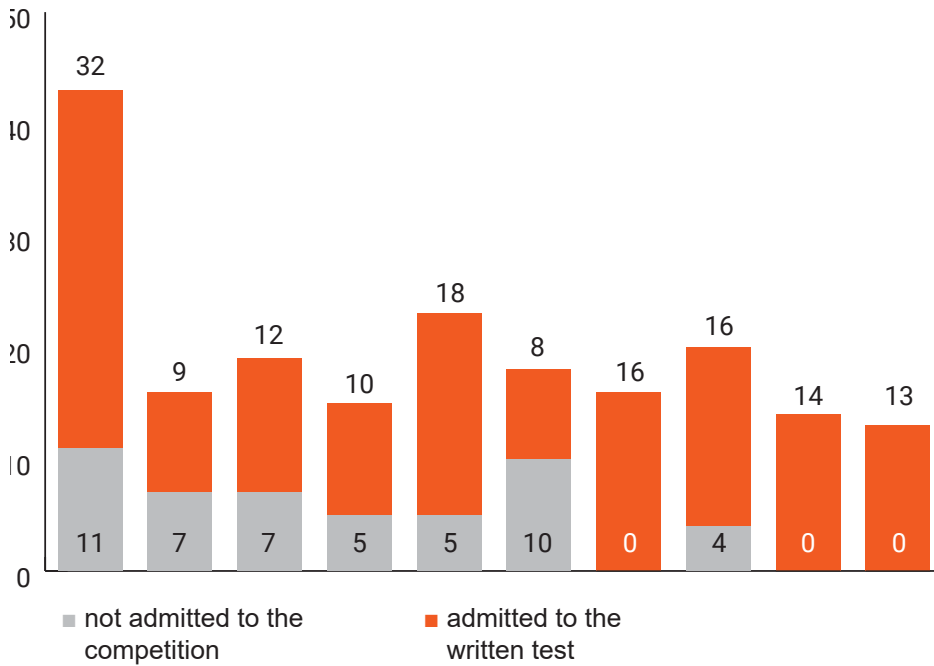
By 31 December 2021, after four years of competitions, the NIA managed to fill only 26 out of the 46 positions of integrity inspector. The busiest competition was the first one, which had 43 candidates, while in the subsequent competitions, their numbers halved. The average selection ratio of the competitions is only 14%.

Number of applications in the completed competitions (2018 – 2021)

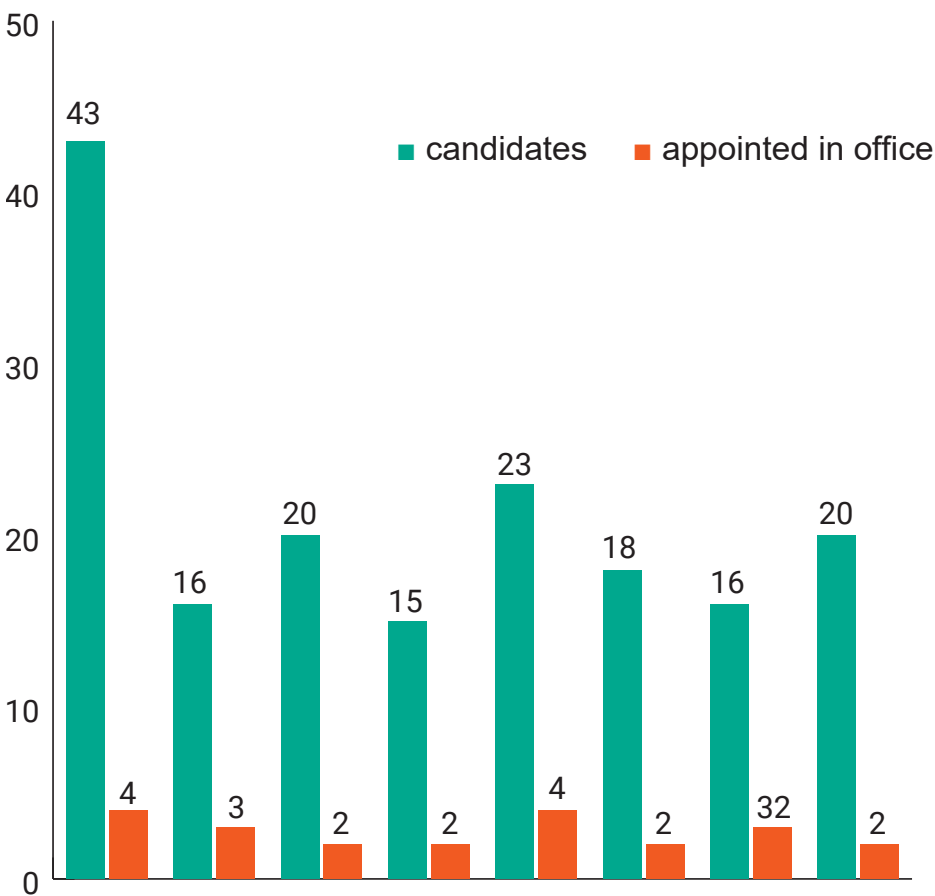


⁶¹ NIA, communiqué “ANI anunță, începând cu data de 12 aprilie 2018, concurs pentru suplinirea funcției publice cu statut special inspector de integritate,” available at <https://ani.md/ro/node/307> (accessed on 13 January 2022)

Ratio of admitted candidates to rejected candidates in the competitions for integrity inspector (2018 – 2021)



Candidates versus appointed inspectors (average selection ratio – 14%)



Source: The NIA’s activity reports, and the communiqués published on the NIA’s website. The data was processed by the LRCM.

The slow process of hiring integrity inspectors is determined by strict recruitment requirements and lengthy procedures for screening candidates. Candidates' applications are sent to the ISS for screening, which can take one to four months. Because of the duration of the recruitment process and previous legislative interventions aimed at reducing the salaries of integrity inspectors, these positions lost their attractiveness.

In our opinion, Council members should be fully involved in all competition phases. The delegation of Council members to this committee in rotation would ensure a balanced distribution of workload between all Council members.

Oversight and Relationship with the Management of the NIA

- Proposes the President of the country to appoint and to dismiss the NIA's chairperson and deputy chairperson; requests the President of the country to suspend them from office.
- Approves the annual reports of the NIA.

Proposal to dismiss or to suspend the NIA's management from office

The mandates of chairperson and deputy chairperson of the NIA get terminated (and, implicitly, withdrawn) and suspended by decrees of the President of the Republic of Moldova at the proposal of the Council.

Until October 2021, the NIA's management could be dismissed for failure or refusal to file declarations of assets and personal interests, the fact of joining a political party, the filing of a final court sentence, health reasons that make it impossible to discharge their statutory duties for more than three consecutive months, etc.

Through the October 2021 amendments, the legislator added new reasons for dismissal, such as the finding by the Council that the NIA's management failed to achieve the performance targets set out in the NIA's strategy and work plan or the improper discharge of statutory duties. This provision strengthens once again the Council's oversight function in relation to the NIA's work and seems to address an issue raised earlier, namely that, from its establishment until 2022, the NIA's management kept ignoring the Council's requests concerning the need to have an approved institutional strategy.

The mandates of chairperson and deputy chairperson of the NIA are suspended if their holders are put on trial for crimes that are incompatible with these offices (in which case the suspension applies until a final court judgment), register as candidate for an elective office, or take maternity, paternity, or childcare leave.

During the reference period (2016 – 2021), there were no situations or proposals requiring the dismissal or withdrawal of the NIA's chairperson or deputy chairperson.

The Approval of the NIA's Annual Activity Reports

Under the law, before 1 March of every year, the NIA's management must submit the Council its activity report. After that, before 31 March, the NIA's management presents its activity report for the previous year at a plenary meeting of Parliament.

The NIA's annual activity reports for 2016 – 2018 have gone through the Council's validation procedure, although this required multiple meetings where Council members made slight improvement recommendations.⁶²

The Council approved the NIA's activity report for 2019, but with numerous recommendations for the NIA, such as to improve the layout of the report, to include information about the implementation of the work plan, to tie the information about budget spending to the structure of the report and the activities carried out to prepare the annual report for 2020, etc.⁶³

The Council did not approve the NIA's activity report for 2020. The draft report was submitted on 24 February 2021 and published on the NIA's website on 1 March 2021, less than one week before the examination deadline. On 15 March 2021, the draft report was presented to the Council and raised numerous questions and proposals.⁶⁴ As a result, the draft was revised, and the revised version was presented to the Council on 8 April 2021. The Council found that the content of the report for 2020 did not satisfy the Council members' requirements and recommendations.⁶⁵ On 28 April 2021, the NIA's chairperson presented the activity report to Parliament without the approval of the Council.⁶⁶

The Council's decisions are binding on the NIA's management. We recommend improving the cooperation between the NIA's management and the Council by making it friendlier, which has been a challenge for the former Council members.

The relationship and cooperation between the Council and the NIA's chairperson and deputy chairperson

During the reference period, we noticed profound dissensions and lack of cooperation between the NIA's management and Council members on the one hand and between the NIA's chairperson and deputy chairperson on the other hand.

The report does not aim at looking into the roots of these issues. Our impression was that these are rather subjective (interpersonal) by nature. All interviewees described cooperation between their institutions as unsatisfactory.

"There's the impression of unjustified competition between the NIA and the Council..."

(Interview with a former member of the Council—November 2021)

⁶² The Council examined the annual activity report for 2016 in three public meetings and approved it by a majority vote, albeit with a dissenting opinion and recommendations. The NIA's activity report for 2017 was approved by IC Decision no. 1 of 21 February 2018, after an examination that spanned three meetings. The NIA's activity report for 2018 was approved by IC Decision no. 3 of 4 March 2019. The NIA's chairperson submitted the NIA's activity report for 2019 at the Council's meetings held on 24 February and 2 March 2020. Eventually, after public debates, the annual report went through, with a series of recommendations, at the meeting of 25 May 2020.

⁶³ IC, activity report for 2020, p. 3, available at https://www.ani.md/sites/default/files/Raport%20CI%202020_0.pdf

⁶⁴ Minutes 5 of 15 March 2021, available at <https://www.ani.md/sites/default/files/PV-5%20din%2015.03.2021.pdf>

⁶⁵ IC Decision no. 6 of 8 April 2021 on the activity report of the NIA for 2020, available at <https://www.ani.md/sites/default/files/HCI-6%20din%2008.04.2021.pdf>

⁶⁶ NIA, letter for the presentation of the activity report to Parliament, available at <https://www.parlament.md/LinkClick.aspx?fileticket=NlnpbYmmJ8w%3d&tabid=202&language=ro-RO>

According to observations, the relations between the NIA and the Council are conflictual at least. As mentioned earlier, many important documents were adopted with delays, mostly because the Council disagreed with the draft documents proposed by the NIA's management. All these disagreements feed the public perception that the IC and the NIA are not efficient. The Institutional framework does not provide for efficient ways to resolve issues that may arise as a result of differences in opinions. Moreover, the situation reached the absurdity of NIA filing a legal action against the Council.⁶⁷

We recommend the NIA's management and the new Council members to seek conciliation and to maintain open communication. Despite the failure of previous attempts, we recommend setting up a conciliation committee that would mediate a solution to this situation because its perpetuation is totally unproductive.

During the reference period, the Council received at least four reports of dissensions between the chairperson and deputy chairperson of the NIA (which concerned absence from work for over six hours, assets control, improper pressure on an integrity inspector, etc.).⁶⁸ The public, including MPs, seem to be aware of these dissensions. The recent amendments are intended to ensure that such situations do not appear in the future. Next time the Council will nominate the NIA's chairperson through competition and the latter will nominate the deputy chairperson.

Integrity Compliance Checks

The Council has the following duties related to the checks of compliance with the integrity regimes:

- Checks the timely filing of declarations of assets and personal interests by the chairperson and the deputy chairperson and by integrity inspectors.
- Checks the assets of the chairperson and the deputy chairperson.
- Examines complaints and grievances concerning the chairperson and the deputy chairperson.
- Examines and resolves conflicts of interests of the chairperson, the deputy chairperson, and integrity inspectors and complaints concerning the violation of the legal regime of incompatibilities by them.
- Establishes contraventions related to the violation of the legal regime of assets and personal interests, conflicts of interests, or incompatibilities by the chairperson and the deputy chairperson and prepares minutes on them.

67 The NIA considers that the Council exceeded their duties by issuing Decision no. 1 of 14 January 2020 binding the NIA to issue the administrative act on hiring an integrity inspector. In January 2020, the Council requested the NIA to comply with a decision of the committee for resolving challenges by appointing a certain person as integrity inspector. In response, the NIA filed a lawsuit.

68 On Note 01/3495 of 3 August 2020 to the deputy chairperson of the NIA on the legality of the described facts; On Note 01/4156 of 7 September 2020 to the chairperson of the NIA on the actions that derogate from the effective regulatory framework admitted by the deputy chairperson of the NIA; On Request C-795/21 of 13 September 2021 for conducting an assets check on the deputy chairperson of the NIA for all periods during which he had held mandates, public offices, and top-ranking public offices at public institutions of the Republic of Moldova; On Note 01/3994 of 26 July 2021 to the NIA concerning the examination of deviations from the legal framework admitted by the deputy chairperson of the NIA.

When the Council checks the filing of declarations of assets and personal interests and fact-checks the complaints and grievances concerning the NIA's chairperson, deputy chairperson and integrity inspectors, Council members have access to the interoperability platform developed by the government, which allows them to consult state records and other information necessary for an efficient discharge of duties and have the right to process personal data in accordance with the laws in force.

In practice, to carry out the verification procedures, the Council assigns representatives of the SCM and the SCP (since they are professional judges and prosecutors).⁶⁹ The NIA offers the Council two integrity inspectors to facilitate the corroboration of intelligence with state records. The interviewees mentioned biasedness and the lack of engagement of the assigned inspectors during this process.

Although the law sets this duty, in practice, the NIA's management and integrity inspectors have never undergone a genuine assets check. Verifications focused only on the timeliness of the filing of declarations, while the assets checks were superficial (covering compliance with formal requirements, the collection of publicly available information, including from media articles, etc.). When the Council had reasonable suspicions about a possible violation of a legal regime, it simply requested the subjects to provide documents and explanations.⁷⁰ This is because in practice Council members do not have access to state records.

Some Council members said that the Council received citizens' complaints about the NIA's management permanently, but they had great difficulty examining them carefully because they did not have direct access to necessary records and did not have their own secretariat.

The proper discharge of the Council's duty related to the checking of assets and personal interests of the NIA's management and integrity inspectors is still an issue. Council members consider that this is caused by a lack of clear practices and administrative support from the NIA.⁷¹ According to them, lack of dedicated personnel causes delays in the examination of these matters. The Council should have its own permanent secretariat. The only person that the NIA allocates to them to perform all secretarial work is not sufficient.

According to the latest amendments, based on the proposal of the NIA's chairperson, the Council has the duty to approve the organizational structure and the internal regulation of the NIA. As an alternative solution at the discretion of the Council, this secretariat could have one integrity inspector to examine not only the declarations of assets of the NIA's management and other inspectors, but also aspects related to conflicts of interests and incompatibilities because the number of recruited integrity inspectors is going to increase over time.

69 See IC Decision no. 9 of 15 April 2019 or IC Decision no. 12 of 9 September 2019.

70 IC Decision no. 7 of 19 April 2021, available at <https://www.ani.md/sites/default/files/HCI-7%20din%2019.04.2021.PDF>

71 Minutes 13 of the public debate held by the Council on 5 July 2021, available at <https://www.ani.md/sites/default/files/PV-13%20din%2005.07.2021.PDF>

Other Duties (Un)regulated by the Law

Ensuring the independence of integrity inspectors

Ensuring the independence of integrity inspectors from any external and internal factors would be an important prerogative for the Council. In 2021, the Council received several complaints about the work of integrity inspectors. Some are currently pending before the Council or the Disciplinary Board. There were also communications from integrity inspectors who requested to defend their rights.⁷² One inspector came under the NIA's investigation for having breached the legal regime that restricted the use of the NIA's image and logo when requesting an MDL 16,000 indemnity for catching COVID-19 while on duty. The inspector requested the Council to find whether his actions constituted a violation of the legal rule because the NIA's chairperson claimed he could face dismissal and contraventional liability. After two meetings and debates, the Council concluded that it would not start an investigation because the inspector acted properly.⁷³

We consider it important that the Council act *sua sponte* (spontaneous) on learning from public sources about dissensions between the NIA's management and integrity inspectors, especially in relation to the fair and meritocratic promotion and remuneration of the latter,⁷⁴ which directly affect the work of the institution.

Response to initiatives that compromise the NIA's work

On 16 December 2020, Parliament hastily amended the NIA Law, shortening the limitation period for the NIA's verifications after the end of office from three to one year and setting a one-year limitation period for the application of disciplinary sanctions. These amendments restricted the institution's capacity to investigate civil servants and made it impossible to dismiss them from office for the violation of the integrity regime. Moreover, since the new provisions also applied to the verifications that were underway at the time, many of them had to be dropped. Later the Constitutional Court declared these amendments unconstitutional.⁷⁵

As soon as the bill was filed and approved, the NIA promptly reacted with repeated public statements and legal opinions that highlighted its concerns and warned of the negative consequences those amendments could have.⁷⁶ Only after the bill passed the final reading, the Council convened on 21 December 2020 to discuss it and to express their regrets about the lawmakers' vote and promised to come with a public statement.⁷⁷ This statement, however, has never been published.

⁷² IC, Minutes 14 of 19 July 2021 and Minutes 15 of 2 August 2021

⁷³ IC, Decision no. 12 of 2 August 2021, available at <https://www.ani.md/sites/default/files/HCI%2012%20din%2002.08.2021.PDF>

⁷⁴ Moldova Curată, "Conflict la ANI. Conducerea ANI este acuzată că ar promova în funcție inspectorii de integritate, neglijând meritele profesionale," available at https://www.moldovacurata.md/conflict-la-ani-conducerea-autoritatii-este-acuzata-ca-ar-promova-in-functie-inspectorii-de-integritate-neglijand-meritele-profesionale-1-2490?fbclid=IwAR0K-8-mPhLBeJwssyM1kcZJbM0P9_UxVlptNhyS_Cd__HvSTjzuTNm2tQ (accessed on 9 February 2022)

⁷⁵ CCM Decision 29 of 21 September 2021, available at <https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=785&l=ro>

⁷⁶ NIA, communiqué "Aprobarea proiectului de lege compromite misiunea ANI," available at <https://ani.md/ro/node/1443> (accessed on 7 February 2022)

⁷⁷ IC, Minutes 12 of 21 December 2020, available at <https://www.ani.md/sites/default/files/PV-12%20din%2021.12.2020.pdf>

Another important issue on the public agenda concerned the end of the mandates of some Council members, which rendered the institution unable to function. From July through September 2021, sitting Council members repeatedly urged the Government and the MoJ to start the competition for the nomination of other members. In the end of September 2021, the Council became unable to function and suspended its work.

Although the law does not have express provisions about the Council’s duty to react to initiatives that compromise the NIA’s work, we consider that the institution should be more active in pushing for improvements in the field of public integrity or promoting the NIA’s image.

THE MEETINGS OF THE INTEGRITY COUNCIL

I. The Council’s meetings

The Council’s meetings are public and each of them has a chairperson elected by a majority vote of the members. The meetings have deliberative power if at least five members attend. The Council adopts decisions by a majority vote of its members and the adopted decisions must bear the signature of the chairperson of the meeting.

Figure 1. The meetings held and decisions adopted by the Council, 2017 – 2021



Source: The Council’s activity reports and the LRCM’s observations during the monitoring. The data was processed by the LRCM.

During the reference period, the Council held at least 105 meetings and adopted at least 40 decisions.⁷⁸ These observations show that the Council was active. This activity was especially visible in 2017, when it held competitions to recruit the NIA's management and worked on the main documents for the NIA.

Usually, the Council's meetings take place once or several times a month (on Mondays) and last one to two hours. This is commendable, considering that Council members are not full-time employees at this entity. Moreover, until October 2021, only the Council members for civil society had been paid an indemnity equivalent to 5% of the salary of the NIA's chairperson for each meeting, but not more than for four meetings a month.⁷⁹ In other words, the Council members delegated from public institutions had worked on voluntary basis.

We noticed ambiguities related to the role of chairperson of the meeting at the Council. Sometimes this role involved disproportionate workload for the holding member in comparison with other members because chairmanship periods were uneven and unbalanced. It is advisable to consider introducing a definite period (six months) for holding chairmanship at the Council. Since the mandate of Council member lasts five years, the six-month period would allow each member to take chairmanship at the Council at least once. This does not necessarily involve the amendment of the law since the Council has the leeway to elect the same member as chairperson for several consecutive meetings.

Under the law, the NIA must ensure the secretarial work for the Council and offer its premises for the Council's meetings. The secretariat offers methodological support for the meetings by drafting minutes and supports the Council's work in between the meetings by drafting agendas and communiqués and taking care of whatever is necessary for a smooth conduct of the meetings. In the present, this secretariat has only one staffer, who is assigned for 80% of their working time by an order of the NIA's management.

The interviewed Council members said that the Council's work depends a lot on the support and assistance from the NIA's personnel because the Council does not have its own permanent secretariat to support their daily work.

“The secretariat should report to the Council rather than be under the thumb of the NIA. This is a legal flaw.”

(Interview with a former member of the Council—November 2021)

⁷⁸ ■ In 2016, the Council had only one meeting.

■ In 2017, the Council had 41 meetings and 90 subjects on the agenda. It prepared 38 meeting minutes and issued eight decisions.

■ In 2018, the Council had 19 meetings and 81 subjects on the agenda. It prepared 19 meeting minutes and issued six decisions and one recommendation.

■ In 2019, the Council had 12 meetings and 68 subjects on the agenda. It prepared 12 meeting minutes and issued five decisions.

■ In 2020, the Council had 12 meetings and 62 subjects on the agenda. It prepared 12 meeting minutes and issued nine decisions.

■ In 2021, the Council had 20 meetings and 78 subjects on the agenda. It prepared 18 meeting minutes and issued 12 decisions and two recommendations.

⁷⁹ After the October 2021 amendments, all Council members are paid an indemnity equivalent to 10% of the salary of the NIA's chairperson for each attended meeting, but not more than for two meetings a month. This is meant to stimulate Council members' engagement in this office.

In some activity reports, Council members mentioned that in addition to the secretariat, their work related to the preparation of documents and materials for the meetings of the Council was supported by the NIA's Human Resource and Documentation Directorate and Legal Directorate. However, to be efficient, the Council needs permanent and sufficient personnel. Moreover, in addition to an administrative specialist, the Council also needs a legal officer.

II. Members' participation in meetings

The active participation of Council members is essential for their work. During the reference period, we have noticed that some Council members for civil society had repeated absences. On the other hand, in 2021, none of the Council members had absences from meetings.

Article 12 (4) of the NIA Law states that the mandate of Council member lasts five years, cannot be renewed for another consecutive term, and ends through the expiry of the term, the withdrawal of the holder by the assigning entity, or the dismissal, retirement, or death of the holder. The Council member gets their mandate withdrawn if they fail or refuse to file their declaration of assets and personal interests, a court convicts the member and the sentence becomes final, the member cannot discharge their duties due to health problems for more than three consecutive months, the member makes public statements of their political views about the work of the Council or the NIA or acts in a way that favors a political party, or the member absents themselves from three consecutive meetings without justification or from any six meetings of the Council during one year.

In what follows we will enlarge on the latter reason. One Council member for civil society has absented herself from 30 meetings (four times with justification) during the term of her mandate, which she abandoned before term anyway. In 2018, she did not attend nine consecutive meetings, and in 2019, seven consecutive meetings (see Appendix no. 1 for more information about the absences of Council members).

Eventually, the Council member resigned on her own will rather than having her mandate withdrawn. The Council could have withdrawn her mandate. This may have happened because the legal provisions contain loopholes that leave room for interpretation. We consider that it is necessary to clarify the procedure for withdrawing the mandate of Council member (the procedure enabling the assigning institution to withdraw their mandate, who can make the withdrawal proposal, how many votes are required for that, etc.). The Regulation on the organization and functioning of the Council does not regulate these aspects. In addition, to raise the accountability of Council members, it is necessary to clarify the term "justified absence" in the Regulation. We do not deny that some situations may preclude Council members from attending the meetings of the Council, but these situations should be clarified. Otherwise, the possibility to mark any absence as justified, makes it virtually impossible to withdraw the mandate of an underperforming Council member.

III. The publication of the agenda in advance

Under the Regulation on the work of the Council, the Council must announce every meeting and its agenda at least three days in advance unless the meeting is extraordinary. During the reference period, the Council has usually published its meeting agendas on Friday afternoons or Monday mornings (on the day of the meeting).

We consider that this is an issue because not only does it breach the Regulation on the work of the Council, but it also negatively affects the transparency and predictability of the Council's work.

IV. The number and type of matters on the agenda

According to the information collected from the activity reports, the agenda of the Council had over 380 subjects of varying importance and complexity. It is worth noting, however, that a good deal of them were repetitive and carried over multiple meetings. Sometimes subjects were postponed for lack of information or because the rapporteur was not ready to report or had not prepared the materials.

“I have an important message for future Council members: Know the internal problems of the NIA and do your homework on the subjects put up for discussion. The Council’s meetings must not be „preparatory.”

(Interview with the NIA’s chairperson—December 2021)

V. Decisions and dissenting opinions

The Council publishes all its decisions under the dedicated menu of the NIA’s website. In addition to the 40 published decisions, the webpage contains five dissenting opinions, of which four are by the same Council member.⁸⁰

CONCLUSIONS

This report presents a brief overview of the Council, including its history, organization, and functioning, and is not intended to criticize, but rather to show the issues that prevented the Council from achieving full transparency and efficiency and to draw lessons for the new Council members who are about to take up their duties.

During the first five years of its existence, the Council’s composition underwent multiple changes, six of its members having resigned. This string of resignations might have been caused by political instability, the termination of membership at the organization that had assigned the person to the Council, or disinterest in working at this body. In late September 2021, following the responsible authorities’ failure to assign new members in time, the Council became unable to function and suspended its work. In fact, the responsible authorities failed to comply with the legal period for assigning members to the Council both in 2021 and in 2016. The institutionalization of the Council was a cumbersome process, and for two years, the Council worked rather sporadically, without a proper regulation of its organization and functioning. The Council’s agenda covered over 380 subjects, but many were repetitive and carried over multiple meetings, and some were postponed for lack of information or because the rapporteur was not prepared to report. Moreover, during the period when the Council did not have its own regulation, it frequently postponed its meetings due to lack of quorum or delays on important decisions.

The recruitment of management for the NIA was protracted, lasting almost one year, even though the law allows only several months for it. The prolonged competition period may not be blamed exclusively on the Council. That said, some red tape issues with the competition could have been avoided.

⁸⁰ Minutes of all meetings of the Council, available at <https://www.ani.md/ro/node/792>

The slow process of hiring integrity inspectors for the NIA is determined by strict recruitment requirements and cumbersome recruitment competitions. By 31 December 2021, after four years of competitions, the NIA managed to fill only 26 out of the 46 positions of integrity inspector. The busiest competition was the first one, which had 43 candidates, while the subsequent competitions saw their numbers almost halved. In our opinion, Council members should be fully involved in all competition phases. The delegation of Council members to this committee in rotation would ensure a balanced distribution of workload between all Council members.

Even though the legal framework requires the NIA to have a development strategy, the institution has been working without such a document for five years now. The Council did not approve the strategy taking advantage of the leeway it has in adopting it. The Council's decisions are binding on the NIA. The big challenge for the new Council members will be finding ways to intensify talks with the NIA to have this document approved.

The Council proved to be weak in pushing for improvements in the integrity area, reacting to legislative initiatives that posed a threat to the smooth functioning of the NIA, and in promoting the NIA's image. Some Council members showed a lack of commitment to their mandate at the Council. One of them had been absent at numerous meetings but somehow managed to retain the mandate, although it should have been withdrawn.

The NIA's management and integrity inspectors have never undergone genuine assets checks because the Council does not have access to state records. Moreover, the Council does not have its own full-time secretariat, which is another factor that considerably weakens its efficiency. The legal amendments of October 2021 strengthened the Council's role by increasing the membership of the Council and broadening its duties. However, the Council's relationship with the NIA's chairperson and deputy chairperson still needs to be clarified in practice.

During the reference period, the relationships between the NIA's management and the Council as well as between the NIA's chairperson and deputy chairperson were marked by profound dissensions and uncooperativeness, which seemed to be rather subjective (interpersonal) in nature. All interviewees described the cooperation between their institutions as unsatisfactory. These disagreements feed the public perception that the Council and the NIA are not efficient.

RECOMMENDATIONS

This report recommends the following:

1. Have the Parliament of the Republic of Moldova, the MoJ, and CALM assign their representatives to the Council as a matter of urgency.
2. Ensure that the NIA's management and the new Council members avoid confrontation. Set up a conciliation/mediation committee because it is totally unproductive to let the NIA's management keep disregarding the Council's decisions.
3. Prioritize the adoption of a development strategy for the NIA, ensuring that it addresses the real needs of this institution.
4. Have all Council members fully involved in the recruitment of integrity inspectors on a rotational basis.
5. Allocate a dedicated full-time secretariat for the Council.
6. Make sure that the Council acts *sua sponte* on dissensions between the NIA's management and integrity inspectors, especially when the fair promotion and remuneration of the latter or other matters that may affect the NIA's independence and functionality are at issue.
7. Make sure that the Council is more active in pushing for improvements in public integrity and in promoting the NIA's image.
8. Make sure that the Council amends its Regulation on the organization and functioning in line with the October 2021 amendments to the NIA Law. Clarify the procedure for withdrawing the mandate of Council member.

Appendix 1. Members' Attendance at the Meetings of the Council

✓ - Absence; ✓J - Justified absence

	Meetings of the Council ⁸¹	Ostaf S.	Iftodi V. / Efrim O.	Micu V. / Postu I. / Timotin M	Roşioru M. / Gornea M.	Rusu V.	Paşcovschi T. / Palega V.	Țira D.
2016								
1.	30.12.2016							
2017								
2.	16.01.2017							
3	23.01.2017		✓J					
4	30.01.2017		✓J					
5	06.02.2017						✓	
6	13.02.2017						✓	
7	16.02.2017			✓J		✓J	✓	
8	20.02.2017							
9	27.02.2017			✓J				
10	06.03.2017		✓J			✓J		
11	13.03.2017							✓J
12	20.03.2017			✓J			✓J	
13	27.03.2017							
14	10.04.2017							✓
15	05.05.2017							
16	18.05.2017		✓	✓	✓			✓
17	19.05.2017		✓	✓	✓			
18	22.05.2017		✓J				✓J	
19	05.06.2017		✓	✓J				
20	14.06.2017	✓						
21	30.06.2017			✓J	✓			
22	03.07.2017			✓J	✓			
23	12.07.2017		✓J		✓			
24	24.07.2017							
25	31.07.2017							
26	16.08.2017			✓J	✓J	✓J		
27	04.09.2017							
28	12.09.2017			✓		✓		
29	18.09.2017			✓		✓		✓
30	21.09.2017							

81 Source: Minutes of all meetings of the Council, retrieved from <http://ani.md/ro/node/30>. The data was processed by the LRCM.

	Meetings of the Council ⁸¹	Ostaf S.	Iftodi V. / Efrim O.	Micu V. / Postu I. / Timotin M	Roşioru M. / Gornea M.	Rusu V.	Paşcovschi T. / Palega V.	Țira D.
31	02.10.2017							
32	09.10.2017			✓J				
33	23.10.2017			✓J				
34	30.10.2017		✓J				✓	✓M
35	02.11.2017					✓J	✓J	
36	13.11.2017			✓J				
37	27.11.2017			✓J	✓J			
38	11.12.2017					✓J		
39	22.12.2017					✓J	✓J	
2018								
40	06.02.2018			✓			✓	
41	12.02.2018	✓					✓	
42	21.02.2018	✓					✓	
43	12.03.2018	✓						
44	21.03.2018		✓				✓	
45	26.03.2018			✓			✓	
46	02.04.2018			✓	✓			
47	23.04.2018			✓			✓	
48	08.05.2018		✓					
49	28.05.2018	✓	✓					
50	18.06.2018			✓			✓	
51	16.07.2018		✓				✓	
52	23.07.2018			✓			✓	
53	07.08.2018			✓			✓	
54	13.08.2018			✓			✓	
55	24.09.2018			✓			✓	
56	29.10.2018	✓					✓	
57	12.11.2018			✓			✓	
58	19.12.2018		✓				✓	
2019								
59	24.01.2019			✓			✓	
60	13.02.2019						✓	
61	4.03.2019			✓J			✓	
62	11.03.2019			✓J			✓	
63	01.04.2019		✓J				✓	
64	15.04.2019			✓J			✓	
65	27.05.2019						✓	✓
66	09.09.2019							

	Meetings of the Council ⁸¹	Ostaf S.	Iftodi V. / Efrim O.	Micu V. / Postu I. / Timotin M	Roşioru M. / Gornea M.	Rusu V.	Paşcovschi T. / Palega V.	Țira D.
67	28.10.2019				✓			
68	18.11.2019							
69	09.12.2019				✓			
70	16.12.2019							
2020								
71	14.01.2020							
72	27.01.2020							
73	24.02.2020							
74	02.03.2020		✓					
75	25.05.2020							
76	09.06.2020		✓					
77	06.07.2020		✓					
78	21.09.2020		✓					
79	19.10.2020							
80	09.11.2020							
81	07.12.2020		✓					
82	21.12.2020				✓			
2021								
83	18.01.2021							
84	15.02.2021							
85	22.02.2021							
86	04.03.2021							
87	29.03.2021							
88	08.04.2021							
89	19.04.2021							
90	17.05.2021							
91	24.05.2021							
92	14.06.2021							
93	28.06.2021							
94	05.07.2021							
95	19.07.2021							
96	26.07.2021							
97	02.08.2021							
98	13.09.2021							
99	20.09.2021							
100	27.09.2021							

Appendix 2. Competitions for the Recruitment of Integrity Inspectors (12 April 2018 – 31 December 2021)

Competition period (from the announcement until the investiture)	Duration of the competition (days)	Duration of the competition (months)	Number of applications	Disqualified from competition	Admitted to the written test	Present at the written test	Passed the written test	Average grade for the written test	Passed the interview	Average grade for the interview	Passed the lie detector test	Appointment
12.04.2018 - 11.06.2018	60	2	43	11	32	30	10	8.00	6	8.27	4	4
12.06.2018 - 17.10.2018	127	4	16	7	9	8	6	8.51	4	8.10	3	3
20.08.2018 - 24.01.2019	183	6	20	7	12	n/a	3	7.70	3	8.11	2	2
24.04.2019 - 31.07.2019	98	3	15	5	10	n/a	3	7.12	2	8.34	2	2
20.06.2019 - 18.10.2019	120	4	23	5	18	n/a	8	7.55	5	8.01	4	4
29.08.2019 - 17.12.2019	110	4	18	10	8	n/a	5	8.45	5	7.96	2	2
10.03.2020 - 9.10.2020	213	7	16	0	16	10	5	7.46	4	7.78	3	3
28.09.2020 - 1.03.2021	154	5	20	4	16	13	2	7.32	2	7.34	2	2
15.02.2021 - 15.06.2021	121	5	n/a	n/a	14	12	5	7.88	5	7.99	2	2
9.09.2021 - -- underway on 31.12.2021	-		n/a	n/a	13	11	6	7.76	6	8.28	4	4
AVERAGE/TOTAL	116	4	171	49	148	53	53	7.77	42	8.02	26	26

Source: The NIA's activity reports, and the communiqués published on the NIA's website. The data was processed by the LRCM.

Appendix 3. Questionnaire for the Interview

Date: |_|_| Month:|_|_| 2021 Questionnaire No.:

Respondent (surname, name, position: _____)

1. How would you describe your cooperation with the NIA?

(For the NIA's management: How would you describe your cooperation with the Council?)

■ **1A** (if the respondent describes it as good)

What are the key elements that make you consider this cooperation good?

■ **1B** (if the respondent describes it as bad)

What are the causes and shortcomings that make you consider this cooperation bad?

■ **1C** (if the respondent describes it as neither good nor bad)

What are the key elements and causes that make you consider this cooperation neither good nor bad?

2. What is the Integrity Council? What role do you think it has? Is the current legal framework clear or rather interpretative about this subject?

3. Do you think that the Council's duties described in the NIA Law (before the October 2021 amendments) are sufficient?

Regardless of the answer: Why? Please, elaborate.

4. How would you describe the process for recruiting integrity inspectors? Why is the number of integrity inspectors still small even at the end of this year?

5. What are the top three or four achievements that make you proud or that you consider as successes in your work at the Council (For the NIA's management: at the NIA)?

1.

2.

3.

4.

6. What important messages do you have for the new Council members who are about to be appointed?



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