

LEGAL OPINION

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regarding the draft law on the creation of the Prosecution Office for Combating Corruption and Organized Crime (PACCO) and the liquidation of the Anticorruption Prosecution Office and of the Prosecution Office for Combating Organized Crime and Special Cases

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Summary	In essence, the opinion underlines that the draft law is not supported by a coherent analysis grounded in the existing legal framework, starts from an unclear premise regarding the role of prosecution offices in preventing and combating corruption (including electoral corruption), and proposes the liquidation of prosecution offices which are not, objectively, responsible for the alleged shortcomings. The initiative is not envisaged in the 2022–2025 Justice Sector Independence and Integrity Strategy, in its Action Plan, or in the Roadmaps for EU accession, and that it also contradicts GRECO Recommendations and the commitments undertaken by the authorities towards the IMF regarding strengthening the independence of the Anticorruption Prosecution Office. The opinion shows that the issues of competence between the Anticorruption Prosecution Office (PA) and the Prosecution Office for Combating Organized Crime and Special Cases (PCCOCS) are already regulated by the Criminal Procedure Code, and that the draft introduces improper control mechanisms over the mandate of the Chief Prosecutor, with vague criteria and an insufficiently qualified evaluation commission, which increase the risk of political influence. At the same time, the opinion highlights the major risks created by concentrating, within a single structure, investigations into corruption, organized crime, offences against state security and terrorism, without effective control mechanisms, with a potential of

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becoming a “state within a state”. The draft provides for the transfer of specialized prosecutors to territorial prosecution offices in a manner equivalent to a collective demotion, with serious labour-law vulnerabilities and a high risk of litigation, affecting the State’s capacity to investigate high-level corruption and organized crime.

We also draw attention to the fact that the 30-day time-limit for transferring approximately 1,940–2,000 files under criminal investigation and about 880 cases pending before the courts is unrealistic and may lead to prescription, nullities and loss of evidence, while the derogations proposed from the Criminal Procedure Code affect the right to defence, legal certainty and the principle of non bis in idem. Finally, it is noted that the budgetary impact has not been assessed, and that strengthening the PA and PCCOCS, instead of liquidating them and creating PACCO, would likely cost less and entail significantly lower risks for the rule of law.

This opinion is submitted to the Secretariat of the Venice Commission in the context of the November 2025 fact-finding visit on the draft law on the creation of the Prosecution Office for Combating Corruption and Organized Crime and the liquidation of the existing specialized prosecution offices. The Legal Resources Centre from Moldova (LRCM) acknowledges the need to strengthen the State’s capacity to investigate corruption and organized crime, but considers that the solution proposed by the draft is disproportionate, insufficiently substantiated and entails major risks for the independence of prosecutors, the continuity of investigations and the process of accession to the European Union.

With a view to enabling an informed opinion, LRCM formulates a series of observations structured around the issues of justification, strategic alignment, competence, guarantees of independence, continuity of investigations, protection of procedural rights and budgetary impact, briefly described below.

▪ **THE JUSTIFICATION OF THE NEED TO ADOPT THE LAW DOES NOT CONTAIN COHERENT ARGUMENTS FOR ASSESSMENT**

The justification of the need to adopt the law does not contain coherent arguments supported by the legal framework in force. The idea underlying this draft, as presented in the explanatory note, starts from an inconsistent premise. The author claims that there are several reasons justifying the creation of a new institution within the structure of the Prosecution Service of the Republic of Moldova, invoking alleged shortcomings in the process of preventing and combating corruption, in particular “electoral corruption”. However, under national legislation, the powers to prevent and combat offences, including electoral

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corruption, belong to the Police¹, National Anticorruption Centre² and Intelligence Service³, and not to the Anticorruption Prosecution Office or to the Prosecution Office for Combating Organized Crime and Special Cases. Unlike the prosecution offices, these bodies have been expressly vested by law with powers to prevent and combat offences. Furthermore, the Criminal Procedure Code provides that the competence to prevent, combat and investigate electoral corruption belongs to the National Anticorruption Centre, while the coordination of criminal investigation activities lies with the territorial prosecution offices, not with the specialized ones.

In these circumstances, the authors of the draft appear to identify deficiencies in the activity of other authorities (Police, CNA and SIS), which are responsible for preventing and combating corruption, including electoral corruption, but the proposed solution is to liquidate structures which, objectively, are not vested with such powers.

▪ **THE MEASURE IS NOT ALIGNED WITH ADOPTED STRATEGIES AND IS NOT BASED ON A SUBSTANTIATED ANALYSIS**

The liquidation of the current specialized prosecution offices and the creation of a single prosecution office are not envisaged either in the 2022–2025 Strategy on Ensuring the Independence and Integrity of the Justice Sector or in its implementing Action Plan⁴. Likewise, the Roadmaps for the implementation of the commitments in the process of accession of the Republic of Moldova to the EU do not contain such an objective. Therefore, the proposed initiative is not aligned with the existing justice reform framework, which risks affecting institutional stability, the predictability of the reform process and, implicitly, the accession negotiations.

The explanatory note to the draft law invokes various legal-political premises in support of the proposed measure, such as decisions of the Supreme Security Council and conclusions of certain parliamentary hearings. However, it does not contain a substantiated analysis – based on statistical data, impact studies or comparative assessments – that would convincingly demonstrate the necessity and efficiency of the proposed measure. On the contrary, the idea of the draft contradicts the GRECO Recommendations, according to which “the Anticorruption Prosecution Office should be provided with adequate human,

¹ Law no. 320 of 27.12.2012 on Police Activity and the Status of the Police Officer, Article 2: *The Police is a specialized public institution of the State, subordinated to the Ministry of Internal Affairs, which has the mission to protect the fundamental rights and freedoms of the person through activities of maintaining, ensuring and restoring public order and security, and of **preventing, investigating and detecting** criminal offences and contraventions.*

² Law no. 1104 of 06.06.2002 on the National Anticorruption Centre, Article 11 para. (1):

The National Anticorruption Centre (hereinafter “the Centre”) is an autonomous public authority specialized in the prevention and combating of corruption, corruption-related acts and corruptible acts..

³ Law no. 136 of 08.06.2023 on the Intelligence and Security Service of the Republic of Moldova, including Article 3 point 2) letter a):

For the purpose of ensuring state security and of identifying, reducing or countering vulnerabilities, risk factors and threats to the security of the Republic of Moldova, the Service shall develop and implement, within the limits of its competence, a system of measures aimed at identifying, preventing and countering actions and/or inactions directed at influencing electoral processes for the purpose of promoting the interests of other states, unconstitutional entities, an organised criminal group or a criminal organisation..

⁴ https://www.legis.md/cautare/getResults?doc_id=129241&lang=ro.

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financial and technical resources, as well as with the necessary autonomy for effectively investigating and prosecuting offences involving persons with top executive functions, and should periodically inform the public about its activities.”⁵

Furthermore, the initiative contradicts the commitments undertaken by the authorities before the International Monetary Fund ⁶. On 2 December 2024, the Prime Minister of the Republic of Moldova, the Minister of Finance and the Governor of the National Bank of Moldova signed a Letter of Intent undertaking, inter alia, to ensure the operational independence of the Anticorruption Prosecution Office, a staffing level of at least 70% by the end of March 2025 and separate premises by the end of December 2024.

▪ **THE DRAFT INTRODUCES IMPROPER CONTROL MECHANISMS OVER THE MANDATE OF THE CHIEF PROSECUTOR**

The authors of the draft propose establishing a procedure for the periodic evaluation of the activities of the Chief Prosecutor (Article 6 of the draft), thereby bypassing traditional disciplinary mechanisms. However, the composition of the Evaluation Commission does not provide sufficient guarantees regarding the members’ capacity to objectively assess the performance of the Chief Prosecutor, since none of them is required to have managerial experience and only 2 out of the 5 members must have at least 7 years of experience as a prosecutor.

In the same vein, the evaluation criteria set out in the draft are potentially susceptible to corruption, given their ambiguous content, which allows for discretionary and abusive interpretations. This affects both the security of the mandate of the Chief Prosecutor selected through a competitive process and the activity and independence of the specialized prosecution office and, not least, undermines public confidence in its functioning.

At the same time, the draft gives political institutions and the Prosecutor General an enhanced role in selecting the leadership of PACCO, removing some of the guarantees of stability of the mandate and of protection against political influence. At present, only 5 of the 11 members of the Superior Council of Prosecutors are prosecutors, the rest being representatives appointed by Parliament, the Government, the President of the Republic of Moldova, the Academy of Sciences, as well as the Minister of Justice and the President of the Superior Council of Magistracy..

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⁵ GRECO: [Fifth Round Evaluation](#) para.96.

⁶ <https://www.imf.org/en/-/media/files/publications/loi/2024/mda120224.pdf>.

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▪ **IMPOSSIBILITY OF IMPLEMENTING EFFECTIVE CONTROL MECHANISMS OVER THE ACTIVITY OF THIS PROSECUTION OFFICE**

This risk is evident given the competences assigned to the new prosecution office in investigating corruption and related offences, organized crime, offences against state security and terrorism. These powers entail the concentration, within a single institution, of a significant volume of sensitive information – both criminal cases and the results of special investigative activities – generating considerable discretionary power and involving a large number of prosecutors and criminal investigation officers who, in the absence of adequate safeguards, may deviate from their lawful mission and come to function as a “state within a state”.

In addition, the new prosecution office will retain procedural control over the criminal investigation bodies with general territorial competence (with the exception of the National Anticorruption Centre). The law does not provide effective control mechanisms on the part of the Prosecutor General, and the establishment of complex hierarchical mechanisms (through direct control exercised by prosecutors within the Prosecutor General's Office) would risk affecting the independence of the specialized prosecution office. Currently, the two specialized prosecution offices share competence in the investigation of serious crime and operate as two institutions that balance each other.

▪ **TRANSFER OF SPECIALIZED PROSECUTORS TO TERRITORIAL PROSECUTION OFFICES – DISGUISED DEMOTION**

Article 11 para. (5) of the draft law provides that, upon the cessation of activity of the specialized prosecution offices, their prosecutors, including those holding management positions, shall be transferred, with their consent and without competition, to other territorial prosecution offices, to vacant positions of prosecutors, with the exception of positions of Chief Prosecutor.

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According to Article 39 para. (5) of Law no. 3/2016 on the Prosecution Service, demotion from office includes, inter alia, the transfer of a prosecutor from a specialized prosecution office to a territorial prosecution office. Moreover, demotion from office is applied based on a disciplinary decision, by order of the Prosecutor General. Such a decision must be adopted by the Disciplinary and Ethics Board and upheld by the Superior Council of Prosecutors (Article 51 para. (7)).

The analysed draft law provides for the liquidation of the specialized prosecutor positions within PCCOCS and PA. A direct consequence of this initiative is the demotion of all prosecutors within these prosecution offices, in the absence of prior disciplinary proceedings. This measure generates multiple legal vulnerabilities and may run counter to the principles of labour law.

Under the draft law, PACCO will be established upon the publication of the law, while PCCOCS and PA will only be abolished 30 days later. During this period, the new structure will have vacant positions equivalent to those abolished. In line with the spirit of labour law, these positions should be offered to the current prosecutors of the specialized prosecution offices. Otherwise, there is a risk that they will refuse the transfer – perceived essentially as a demotion – which would prompt the Prosecutor General to order their dismissal under Articles 86 and 88 of the Labour Code.

The solution of transferring them to equivalent positions within the Prosecutor General's Office is not viable because the latter does not have sufficient vacant posts.

In any event, the liquidation would result in the unavailability of approximately 70–80 prosecutors (including managers) specialized in investigating high-level corruption and offences committed by organized criminal groups or criminal organisations, as well as other specific categories of offences such as those against state security.

Subsequently, dismissed prosecutors could challenge the dismissal order before the courts, and the likelihood that such actions would be upheld is high. Even though the current positions are abolished by law, other entirely similar positions are simultaneously created, and the principles of labour law require that persons whose positions are abolished be offered other similar existing positions.

In addition, the derogation laid down in Article 11 para. (28) of the draft, which provides for a 6-month period during which prosecutors may be seconded to PACCO without their consent, entails an excessive restriction of the right to freely choose one's work, as enshrined in Article 43 para. (1) of the Constitution, and affects prosecutorial independence.

- **THE PROPOSED MECHANISM CANNOT ENSURE THE EFFECTIVE CONTINUITY OF INVESTIGATIONS AND COMPLIANCE WITH THE REASONABLE TIME REQUIREMENT FOR THE TRIAL OF CASES**

The approximate cumulative backlog of cases in the hands of PCCOCS and PA prosecutors is about 1,940–2,000 cases at the criminal investigation stage (including about 550 cases handled directly by prosecutors) and about 880 cases pending before the courts. The realistic time-frame for transferring these cases to the newly created prosecution office cannot be precisely estimated; however, it is certain that, given their

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volume and complexity, the 30-day time-limit set in Article 12 para. (11) of the draft is not viable. The authors of the draft failed to take into account several important aspects:

1. It is not possible to allocate sufficient human resources to inventory the criminal investigation materials, administrative acts and archives within a 30-day period.
2. Ongoing criminal cases are usually transferred from one prosecutor to another prosecutor duly designated by the Chief Prosecutor (in this case, the Chief Prosecutor of PACCO).
3. When inventorying criminal investigation materials, it is necessary to ensure the confidentiality of data (Article 212 of the Criminal Procedure Code), whereas in this situation they will initially be received by persons who will not have criminal investigation powers, yet will have access to sensitive information, including state secrets.
4. Some cases contain a large volume of materials and documents (in certain high-profile cases they may amount to several hundred, and in particular situations to several thousand volumes).
5. In a large part of the ongoing criminal cases, special measures, financial investigations or preventive measures are underway.
6. The transfer of cases in which Joint Investigation Teams are set up will suspend their activity.
7. The criminal cases will first be transmitted to the Prosecutor General's Office, then from the Prosecutor General's Office to PACCO, and only afterwards will they be allocated to prosecutors, who will have to study them and then continue the investigations, which may lead to the irreversible loss of evidence or opportunities to collect evidence.
8. During the transitional period, some criminal cases may be procedurally compromised, and the persons concerned may invoke nullities or delays.

In conclusion, the minimum time required to transfer all the files at the criminal investigation stage could far exceed 30 days, a period during which some time-limits for carrying out special investigative measures, for enforcing preventive measures or for criminal liability prescription may expire. Major shortcomings may also arise from the change of public prosecutors in court. This process will inevitably delay the adjudication of cases, lead to the loss of continuity in the representation of the prosecution and to the expiry of limitation periods, and will also seriously affect the quality of prosecution in court.

THE DRAFT INTRODUCES PROVISIONS THAT INFRINGE THE RIGHT TO DEFENCE

The authors have established a series of derogations from the provisions of the Criminal Procedure Code that affect the right to defence, including:

- Ex officio review of solutions adopted by prosecutors, including those of sending a criminal case to trial (Article 12 para. (3)), provisions which affect the principle of legal certainty and, in certain conditions, the principle of *non bis in idem*;

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- Suspension of the running of limitation periods (Article 12 para. (7)), exceptions which clearly fall under unconstitutionality, the relevant case-law on this matter being settled⁷;
- Non-discriminatory suspension of the running of criminal proceedings time-limits (Article 12 para. (9)). In the manner and form established by the authors, this provision would also cover the time-limits for keeping a person in the status of suspect, the time-limits for challenging court decisions, the time-limits for examining complaints, etc., provisions which can clearly lead to violations of Articles 5 and 6 of the ECHR.

Moreover, even if these provisions were intended, in the authors' view, to mitigate the impact of an extended period for transmitting the files, at the risk of generating violations of human rights or the right to defence, they would be inapplicable because they would contradict Article 2 para. (4) of the Criminal Procedure Code, which provides that "Procedural legal norms from other national laws may be applied only if they are incorporated into the present Code."⁸

▪ THE DRAFT GENERATES RISKS OF INCREASED CRIMINALITY

No account has been taken of the fact that the liquidation of PCCOCS and PA and the creation of PACCO involves two periods which can generate a vacuum in responding to unlawful acts:

1. the transitional period between the entry into force of the new law and the operationalization of PACCO through the appointment of the interim Chief Prosecutor (10 days from entry into force), the approval by the Superior Council of Prosecutors of PACCO's structure (10 days from entry into force), the staffing of PACCO with prosecutors seconded from other prosecution offices (10 days from the appointment of the Chief Prosecutor), and the secondment of staff from the liquidated prosecution offices (30 days after entry into force);
2. the adaptation period, which involves the training and specialization of newly seconded prosecutors and which cannot be predicted.

In any event, PACCO will operate for an extended period without having prosecutors specialized in investigating corruption, organized crime, national security offences, economic crime or money laundering, which will inevitably lead to an increase in the number of such offences.

▪ THE DRAFT GENERATES ADDITIONAL BUDGETARY COSTS AND EXPENSES WHICH HAVE NOT BEEN ESTIMATED EVEN BY THE AUTHORS

The authors have not managed to assess the impact of implementing the Law on the public budget and have not developed a concept that would estimate the approximate costs in relation to operational, salary and logistical needs.

⁷ A se vedea <https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=519&l=ro>.

⁸ A se vedea și <https://constcourt.md/ccdocview.php?tip=hotariri&docid=86&l=ro>.

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This is due to the lack of preliminary public consultations (representatives of specialized prosecution offices were not invited to the initial consultations, and the intervention of the Prosecutor General was necessary to ensure their participation), the lack of assessment of the volume and specific nature of the activity, the lack of assessment of the necessary equipment and special technical tools, and the lack of assessment of the degree of operational support available.

However, taking into account the aspects set out in the chapters above, it is possible to estimate that providing these two prosecution offices with adequate financial and human resources could cost the State budget much less than creating a new specialized prosecution office, including in view of the short- and medium-term operational risks generated by the entry into force of the law.

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