Action against Corruption in the Republic of Moldova

TECHNICAL PAPER

ANALYSIS OF THE LEGISLATIVE FRAMEWORK, PROCEDURES, ORGANIZATION AND EFFECTIVENESS OF THE NATIONAL INTEGRITY AUTHORITY OF THE REPUBLIC OF MOLDOVA

Prepared by:
Dr. Valts Kalniņš
Jure Škrbec, Ph.D., CFE
Council of Europe Experts

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The project "Action against Corruption in the Republic of Moldova" aims to address key priorities and needs in the Republic of Moldova which are closely interlinked with the reform processes initiated by the government and their obligations towards implementing international standards against corruption and the related monitoring recommendations. More specifically, the Action is designed to deliver assistance in the legislative, policy and institutional reforms by addressing pending recommendations from the Fourth Evaluation Round of the Council of Europe's Group of States against Corruption (GRECO).

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For further information please contact:

Economic Crime and Cooperation Division
Action against Crime Department
Directorate General Human Rights and Rule of Law
Council of Europe
67075 Strasbourg CEDEX France
E-mail: contact.econcrime@coe.int
www.coe.int/econcrime

Contact persons

Headquarters in Strasbourg	**Council of Europe Office in Chisinau**
Ms Zahra Ahmadova Programme Coordinator Email: Zahra.Ahmadova@coe.int Tel: +33(0)390212844	Ms Nadejda Plamadeala Senior Project Officer Email: Nadejda.Plamadeala@coe.int Tel: +373 022 888909

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ABBREVIATIONS

CPI	Corruption Perceptions Index
GRECO	Group of States of against Corruption
IC	Integrity Council
LEA	Law enforcement agency
MoJ	Ministry of Justice
MoU	Memorandum of understanding
NIA	National Integrity Authority of the Republic of Moldova

1 EXECUTIVE SUMMARY

The National Integrity Authority (NIA) is an independent public authority with broad prevention and oversight functions to monitor wealth and personal interests of public officials and verify compliance with the legal regime of conflicts of interest, incompatibilities, restrictions and limitations. The establishment of NIA in 2016 represented a major attempt to strengthen the institutional anti-corruption framework in the Republic of Moldova. Since then, NIA has not achieved its planned level of capacity in terms of human resources, its management structure has performed inefficiently, and the track record of detected violations arguably focuses more on lower-level public officials and relatively minor irregularities.

At least partly confrontational or non-cooperative relations have developed between NIA and its oversight body – the Integrity Council (IC) as well as between the President and Vice-President of NIA. As a result, the adoption of several significant documents has been delayed (for example, the institutional strategy of NIA remains unapproved by the IC). The institutional design does not envisage effective ways of resolving issues arising due to differences of views. NIA would benefit if it manages to effectively reconcile the principle of the independence of integrity inspectors with the need to ensure consistent application of provisions of laws and compliance with the internal rules and methodology. While the Law No. 132 on NIA and the internal regulatory acts envisage tools of co-ordination and quality assurance regarding acts issued by the integrity inspectors, widely shared critical observations by stakeholders attest to the ineffectiveness of these tools.

The limited resources for providing financial and social incentives in conjunction with a lengthy and complicated hiring procedure contribute to the major understaffing of NIA and, notably, its Integrity Inspectorate. According to the information communicated by some stakeholders during the scoping meetings, even all 43 envisaged positions of integrity inspectors would be insufficient for fully discharging all verification functions. Therefore, the actual staffing level (slightly above 50%) is a detriment of utmost significance.[1]

NIA has established a stable track record of findings of irregularities. Although the concerned public officials appeal almost all ascertaining acts in the court and a certain share of them are fully or partly overturned, NIA's activity generally constitutes a deterrent against noncompliance with the rules of anti-corruption legislation. However, the results vary strongly between different areas of control. The vast majority of detected violations concern conflicts of interest and incompatibilities. External notifications or information published by mass-media often trigger these verifications, and checking the relevant circumstances is relatively simple. On the other hand, the practice of verifying assets and significant differences between income and assets remains limited. This is partly due to complex and time-consuming process of assets verifications, unavoidable difficulties to check certain kinds of assets and partly due to deficiencies in the legal framework, NIA's limited possibilities to carry out in-depth automated analysis, the absence of clear and legally mandated focus on the overall economic plausibility of declarations, etc. Obstacles related to determining the value of certain assets and controls regarding persons with whom public officials have had transactions are broadly recognized and should be resolved by potential amendments of the law (currently under preparation). Moreover, the law does not provide NIA with adequate oversight tools regarding restrictions that apply to former public officials.

This Technical Paper proposes 54 recommendations for legislative amendments and changes in the internal practices of NIA. The proposed priorities for further reforms are the elimination of inefficiencies in the management structure of NIA, ensuring adequate capacity of NIA while protecting appropriate independence, developing and implementing appropriate tools for guaranteeing the legality, high quality and consistency of the acts issued by the integrity inspectors, further developing the ability of NIA to effectively check unexplained wealth of public officials.

[1] The staffing level of the Integrity Inspectorate reflected in the current Technical Paper is as of 31 May 2021

2 INTRODUCTION

The Council of Europe is implementing the Project "Action against Corruption in the Republic of Moldova", funded by the Bureau of International Narcotics and Law Enforcement Affairs (INL) of the US Department of State. The project is designed to deliver assistance in the legislative, policy and institutional reforms by addressing pending recommendations from the Fourth Evaluation Round of the Council of Europe's Group of States against Corruption (GRECO). The project purpose is to enhance capacities of the institutions to implement GRECO recommendations. The project actions provide direct support to the authorities to address the shortcomings identified in the GRECO 4th round evaluation, thus align the measures of the Moldovan authorities with the international standards and good practices for prevention and fight against corruption. This is expected to be achieved through the following outcomes in regard to the NIA:

- Analyze the legislative and regulatory framework on NIA's mandate and internal organization outlining identified challenges impacting the activity of NIA vis-à-vis its mandate with a focus on the following aspects:
    - NIA's mandate regarding control of assets and personal interests, conflicts of interest, incompatibilities, restrictions and limitations (with a focus on control of compliance of high-ranking officials) as well as issuing of integrity certificates;
    - sanctioning of violations regarding above mentioned legal regimes (with a focus on sanctioning of high-ranking officials) and legislative/procedural gaps encountered in the sanctioning process;
    - the mandate of the Integrity Council and its cooperation with NIA;
    - the activity, operational procedures of the integrity inspectorate, recruitment procedures and disciplinary liability mechanisms;
    - NIA's organigram and staffing needs compared to its mandate;
    - preventive mechanisms used by NIA to promote integrity in the public sector and communication with mass-media.
- Propose solutions to strengthen compliance with GRECO recommendations (including recommendations for legislative/institutional amendments to allow NIA to perform effective and independent controls).

2.1 GRECO recommendations

On 1 July 2016, GRECO adopted the Evaluation report on the Republic of Moldova regarding corruption prevention in respect of members of parliament, judges and prosecutors. During the compliance process, GRECO also adopted the First and Second compliance reports in regard to the Republic of Moldova[2]. In the Second compliance report, from 25 September 2020, GRECO found that the ***recommendation iv*** is still partly implemented.

Recommendation iv:

> ***Ensuring a significantly more independent and effective control, by the National Integrity Commission, of compliance by members of Parliament, judges and prosecutors with the rules on conflicts of interest, incompatibilities, statements of personal interests and statements of income and property.***

GRECO recalled that this recommendation was partly implemented already in the First Compliance Report from 7 December 2018. GRECO took note of the new legislation, establishing the National Integrity Authority, which replaced the National Integrity Commission. GRECO noted the following aspects regarding NIA:

> *"the composition of NIA was different from that of the old Commission and its members were not selected on the basis of political belongings. It also noted that the integrity inspectors were to be independent and that NIA's competences were expanded, as compared to the Commission. Furthermore, NIA became competent to take administrative action in respect of late submissions or*

[2] Council of Europe, Group of States against Corruption (GRECO), Fourth evaluation round report (2016), First and Second compliance Reports (2018 and 2020)

failure to submit asset declarations. It started to operate, albeit with limited capacities. Despite these noticeable improvements, the overall effectiveness in practice of NIA was to be reassessed once it had been operational for some time."

In the Second Compliance report from 25 September 2020 GRECO identified the following critical issues in regard to NIA:

- *several weaknesses and obstacles in the process of selection and appointment of candidates for the positions of integrity inspectors, including the following: applicants' low level of professional and training skills; moratorium on employment in the public sector; failure to pass the polygraph test (final stage); unattractive positions following salary reduction.*
- *the statistics on the activities of NIA appear to demonstrate some dynamics, however, several weaknesses appear to undermine its effectiveness, including the lack of a strategy and understaffing, currently there are only 17 integrity inspectors out of 46 required, overall, the current 39 staff members constitute only 52% of the required number of staff, the level of professional capacities is still insufficient.*

2.2 Other sources

Reports from other international organisations also point to substantial challenges. Based on Transparency International Corruption Perception Index (CPI) for 2015-2020, the Republic of Moldova's rank has over the years vacillated between 102 and 123, with an average score of 32 (on a scale of 0 (highly corrupt) and 100 (very clean)), attesting to weak anti-corruption policies and measures. However, if we inspect closely table 1 below, we can see that situation has been slightly improving in the last three years.

Table 1: CPI for Moldova

Year	2015	2016	2017	2018	2019	2020
Score	33	30	31	33	32	34
Rank	102	123	122	117	120	115

GAN Integrity issued *Moldova Corruption Report*[3] in August 2020 stressing, amongst other things, that "*the government lacks transparency and public officials commit acts of corruption with impunity. The judiciary is one of the weakest in the world in relation to independence from the political elite, and judges and prosecutors regularly extort bribes in exchange for reducing charges or imposing milder penalties. The implementation of the anti-corruption legislative framework is deficient as a result of inadequate financing and monitoring and a general lack of resources.*"

2.3 Methodology used for the assessment

The assessment comprised a desk review of relevant legislative acts (the Law No. 82 on Integrity, the Law No. 132 on the National Integrity Authority and the Law No. 133 on the Declaration of Assets and Personal Interests), internal regulations and reports as well as several online meetings with NIA (the President and Vice-president of NIA, the Integrity Inspectorate, the Legal Department, the Integrity Council), Ministry of Justice, EU High-Level Adviser on Anti-corruption, the Presidency and the Legal Resource Centre from the Republic of Moldova, where NIA's effectiveness and challenges in its activity were discussed.

During the scoping meetings, views were exchanged on necessary actions to strengthen the independence, transparency and effectiveness of NIA and its controls with respect to public officials. NIA's mandate and internal operating procedures, its cooperation with the Integrity Council, organigram and staffing needs were among the topics discussed during the meetings. Several legislative initiatives concerning NIA's functioning and the system of declaration of assets and personal interests were also reviewed.

[3] GAN Integrity, Moldova Corruption Report, August 2020

3 ANALYSIS

3.1 National Integrity Authority of the Republic of Moldova

NIA is an independent public authority which ensures integrity in the exercise of public office or the function of public dignity and the prevention of corruption by controlling wealth and personal interests and overseeing compliance with the legal regime of conflicts of interest, incompatibilities, restrictions and limitations. In order to accomplish its mission, NIA has the following functions:

a) exercising control over wealth and personal interests;
b) exercising control over compliance with the legal regime of conflicts of interest, incompatibilities, restrictions and limitations;
c) finding and sanctioning violations of the legal regime of personal property and interests, conflicts of interest, incompatibilities, restrictions and limitations;
d) cooperation with other institutions, both at national and international level;
e) ensuring the good organization of the Authority and the administration of the activity of promoting the integrity of the declaration subjects;
f) other functions established by law.

The NIA is financed from the state budget, which is, according to the Moldovan interlocutors, modest and not enough for NIA to become more functional and efficient. The Table 2 below reflects the numbers regarding the approved budget of NIA and allocated financial means for the control of assets, personal interests, conflicts of interest and incompatibilities. We can see on the one hand an increase of the approved budget of NIA, but on the other hand a decrease in the allocated budget for "investigative" work of NIA.

Table 2: Information on NIA's budget

Years	**2021**	**2020**	**2019**	**2018**
Approved budget	20,397.6 thousand lei (expenditures for the control and resolving of conflicts of interest) **including** 14,938.2 thousand lei (staffing costs)	26,462.50 thousand lei	24,128.00 thousand lei	18,045,30 thousand lei Rectified + 8045.3
Budget allocated for the control of assets, personal interests, conflicts of interest, incompatibilities	20,397.6 thousand lei - 14,938.2 thousand lei = **5,459.40 thousand lei**	15,369.72 thousand lei.	16,654.6 thousand lei	6633,3 8045,3 thousand lei

The team of experts points out the best practice from Montenegro, where Article 95 of the Law on the Prevention of Corruption defines that funds for the operation of the Agency for the Prevention of Corruption shall be provided in the budget of Montenegro **which may not amount to less than 0.2% of the current state budget.** This represents a good solution for the smooth and efficient work of an anti-corruption institution.

Recommendation 1: Consider introducing a guarantee of a certain level of budget funding of NIA in the Law No. 132.

As stated above, NIA is an independent state institution which needs to present its activity report for the previous year at the annual plenary of the Parliament by 31 March. The team of experts examined NIA's activity reports of 2019 and 2020. It was noticed that there is little information on practical examples (controls in regard to high ranking officials, proactive activities, conclusions on important

issues, etc.). In addition, some statistical data is not comparable while other data is missing (see Table 3 below).

Recommendation 2: Annual reports of NIA should be more informative and of practical nature (with practical cases and examples). The reports should also be developed in a manner to support their comparability (statistical data and other content) so that the society can track changes and/ or progress made more clearly.

Table 3: Statistics on NIA's performance

Statistics regarding NIA's performance (for the years 2018, 2019 and 2020)	**2018**	**2019**	**2020** Control initiation rate for the year 2020 – **53.2 %**
Number of total notifications – **received from outside** (on various integrity violations)	263	453	737
Number of notifications for violations regarding conflict of interest			156
Number of notifications for violations regarding incompatibilities			114
Number of notifications for violations regarding restrictions			4
Number of notifications for violations regarding assets of subjects			1
Number of "dismissed" notifications due to not meeting the criteria under the Administrative Code	44	152	352
Number of initiated controls (**total number)**	135	301	400
Number of *ex-officio* controls for conflict of interest			
Number of *ex-officio* controls for incompatibilities			
Number of *ex-officio* controls for restriction of operations			
Number of *ex-officio* controls of assets and personal interests			
Number of *ex-officio* notifications submitted to the inspectors by NIA's President	----------	----------	89
Source of information for opening cases on ex-officio basis	Public information, journalistic investigations	Public information, journalistic investigations	Public information, journalistic investigations

The data that is missing from the above table would present more complete information on the cases investigated by NIA. Especially data on cases which were opened on *ex-officio* basis could show the level of proactiveness of NIA.

According to the management of NIA, the institutional strategy of NIA was developed initially in 2018 and redrafted in 2019. The document to be adopted by IC, remains unapproved for reasons that the experts could not independently verify. NIA defines the institutional objectives in its annual activity plans, but the relevant performance indicators mostly reflect outputs (for example, one of the performance indicators refers to "at least 80% of declarations of assets and personal interests

verified and subjected to control"). No document provided for this assessment envisages the evaluation of outcomes and impact of NIA's activity.

Recommendation 3: NIA and IC should reach an agreement regarding NIA's institutional strategy, which should contain, amongst other things, NIA's strategic objectives with indicators of outcomes and impact. Such indicators could be, for example, the share of civil servants well aware of rules of the legal regime of conflicts of interest, incompatibilities, restrictions and limitations; the share of proceedings of asset controls, which ended with full verification of the initial suspicion (i.e. were not terminated due to lack of access to data); the share of requests for confiscation, which resulted in actual confiscation of assets.

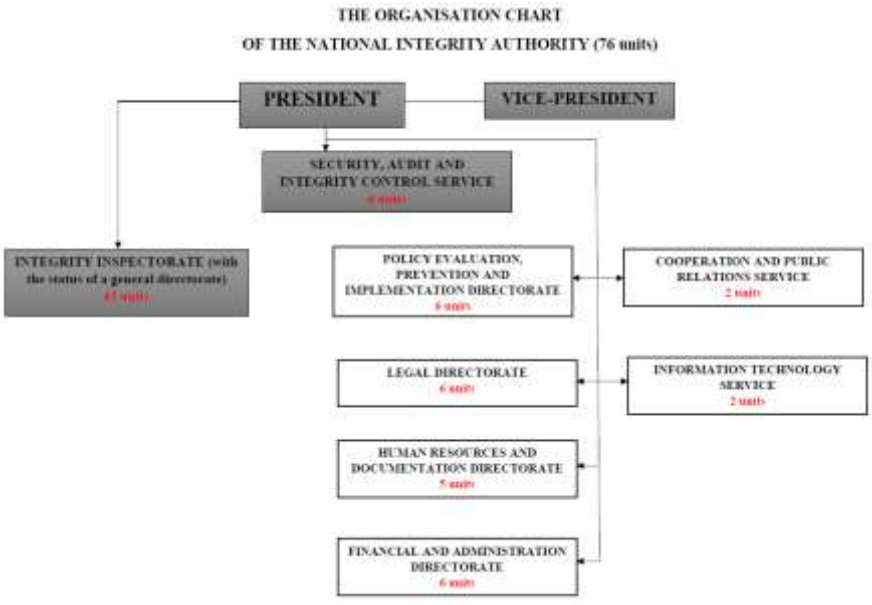
3.2 NIA structure and management

According to the Law No. 132 NIA's structure consists of:

- Managing staff:
  - NIA is led by a President, assisted by a Vice-president; and
- Apparatus:
  - Integrity Inspectorate (with the status of General directorate)
  - Security, Audit and Integrity control service,
  - Policy evaluation, prevention and implementation directorate,
  - Legal directorate,
  - Human resources and documentation directorate,
  - Financial and Administration directorate,
  - Cooperation and public relation service, and
  - Information technology service.

According to the current organizational structure, 76 positions are dedicated to NIA (out of which 43 positions for Integrity inspectorate). The limits on headcount and its organisational structure is, as defined by Article 8 of Law No. 132, under Parliamentary decision. Such provision is not in favour of NIA's independence and its effectiveness. With this regard, it should not be left to the Parliament only to decide on the "future" of NIA's organisational structure and headcount, but it should be drafted and proposed by NIA itself.

Recommendation 4: NIA should prepare the proposal of NIA's headcount and its organizational structure based on an explicit provision of the law, and this prerogative should not be given only to the Parliament.



During the scoping meetings with the Moldovan interlocutors within the assessment, the Council of Europe experts identified that there is a deficient cooperation and a lack of unified views on NIA's mandate between the President and Vice-president. What is more, it was determined that Vice-president of NIA does not have access to all procedures and work of NIA (he possesses only limited competences related to IT issues and public relations), which is not desirable for such an institution. The management of an independent and autonomous anti-corruption institution should be committed and represent common views in public. The above-mentioned disagreements and lack of cooperation among the management team could be a consequence of human / subjective factors.

Recommendation 5: Consider establishing a management "board" consisting of three persons, which would be a collegial body in the decision-making process. Such solution is present in many countries in the EU and worldwide (Armenia (5 members), Croatia (5 members), Slovenia (3 members)). Alternatively consider having a hierarchical structure where the President selects/appoints the Vice-President.

3.2.1 Integrity Inspectorate

During the scoping meetings with Moldovan interlocutors, the team of experts discussed aspects and views regarding the activity of the integrity inspectors. Consequently, some areas were identified which currently represent obstacles for an efficient work of the integrity inspectors and should be improved.

3.2.1.1 Inconsistent application of the legal provisions by the Integrity Inspectors

Moldovan interlocutors warned that the integrity inspectors apply the provisions of the law inconsistently and sometimes issue contradictory acts. Specific concerns mentioned by stakeholders also included the following aspects:

- inconsistent/incorrect application by the integrity inspectors of the internal *Methodology of the control of assets and personal interests and of compliance with the legal regime of conflicts of interest, incompatibilities, restrictions and limitations* (hereinafter – the Methodology),
- complaints regarding poor communication between integrity inspectors and subjects of declaration,
- disregarding the opinions of the Legal Department of NIA in regard to the draft ascertaining acts developed by the integrity inspectors
- few controls initiated regarding high-ranking public officials and too many controls regarding "ordinary" public servants, etc.

The team of experts considers that such allegations and opinions do not favour NIA's image. As it was identified during discussions with NIA, on a quarterly basis, the head of the inspectorate requests information from the inspectors on each individual file, in particular the last actions taken on the inspection files. Provisions other than those specified in the Methodology of control, on the systematisation and consistency of the control actions are not being regulated at the reference date.

The Law No. 132 and the Methodology contain provisions to ensure quality and consistency of the performance of the integrity inspectors. Thus, according to Article 22, Paragraph 1 of the Law No. 132, an integrity inspector shall be directly responsible for the quality of the inspections performed and of the documents prepared in accordance with the criteria established by the regulation approved by the Integrity Council. According to the Regulation on the Organization and Functioning of the Integrity Inspectorate of NIA (Annex to the NIA's Order No. 74 of 24 July 2020), the head of the Integrity Inspectorate shall, amongst other things, ensure the correct application of the provisions of legislation in the Inspectorate's activity, verify and co-ordinate, in the last instance, the drafts of all the documents drawn up within the subdivision. The Methodology envisages that integrity inspectors present to the head of the Integrity Inspectorate (the inspector with attributions of control and organization of the activity of the Integrity Inspectorate) *ex officio* notification reports, drafts of the protocols of initiation of control or refusal of initiation of control, and drafts of ascertaining acts.

Draft ascertaining acts are also submitted for review to the Legal Department of NIA. The opinion of the Legal Department is communicated to the integrity inspector for analysis and possible adjustment of the content of the ascertaining act. The analysis of the legal framework *per se* does not reveal clear reasons why the currently envisaged control and co-ordination mechanism cannot function. However, having all that was mentioned in mind, we can conclude that the current internal "control" is not effective.

Recommendation 6: A proper hierarchical level should be implemented for the integrity inspectors in order to verify the ascertaining acts (finding acts) issued by the inspectors and also to ensure uniform practices and consistent application of the legal provisions by the inspectors.

As for example, within the prosecution service there is a hierarchical control of the acts issued by a prosecutor in order to verify if the legal provisions were interpreted and applied correctly and consistently, without giving specific instructions on the case. Such a practice, if implemented within NIA, would lead to uniform practices and would ensure uniform (consistent) application of the legal provisions. It would be important that such a filter would only ensure the correct and uniform application of the law but would not give instructions to the inspectors on specific cases. NIAs internal Methodology on performing controls already provides for the possibility of having an **inspector-chief responsible for ensuring the consistency and uniformity of the ascertaining acts issued by the integrity inspectors.**

Recommendation 7: Consider including the position of inspector-chief in NIA's organigram in order to supervise the quality of ascertaining acts before they are finalised and issued, the correctness of the application of the control methodologies and to support uniform interpretation and implementation of the legal provisions. Moreover, NIA could apply performance indicators in the activity of integrity inspectors, which assign greater weight to ascertaining the quality of their acts. To avoid disputes as to the legality of these mechanisms, consider determining in the Law No. 132 the main principles and elements of the internal control and the co-ordination mechanism for the acts prepared by the integrity inspectors.

3.2.1.2 Specialisation of the Integrity Inspectors

The team of experts was informed by NIA representatives that currently all the inspectors work on all types of controls (conflict of interest, incompatibilities, restrictions and limitations, control of assets and declarations) without any specialisation. The team of experts is of the opinion that such organisation of working procedures is not effective due to the lack of specialisation and uniform decisions in different areas.

Recommendation 8: NIA should organize the Integrity Inspectorate in a way which divides different types of control among different inspectors: 3 or 4 specialized control divisions (on asset declarations, conflicts of interest, incompatibilities, restrictions and limitations), considering that different procedures are applied in these cases as well as the timeframes for examining these violations are also different. Such an approach would proactively open the possibility to investigate and analyse better initiated controls. The random distribution system of the E-Integrity system would need to be adjusted accordingly.

3.2.1.3 Competitions for the position of Integrity Inspectors

During the scoping meetings with the Moldovan authorities and stakeholders the team of experts was informed that the procedure for selection of the integrity inspectors is a lengthy one and contains several phases (examination of the application, written test, interview, polygraph test and background verifications from the Security and Information Service/SIS). The information on the vacant positions and the competitions launched by NIA are published on the NIA's website and on

other recruitment websites. The competitions are carried out internally within a very short time (namely the written test and interview test). The candidates' integrity screening phases appear to be more problematic: the polygraph test (considering that in the Republic of Moldova there is an insufficient number of certified polygraph experts) and the verification performed by the Security and Information Service (SIS), which can last up to 2 months. The last 2 steps appear to be the ones that delay the procedure of final selection of the integrity inspectors. Therefore, due to the length of procedure these positions are no longer attractive for the candidates. In the Republic of Moldova, as told by interlocutors, there are no other categories of employees who go through such lengthy employment processes (except judges who are also submitted to polygraph testing). Some candidates who successfully passed all the stages, until the final selection decision is issued, have already agreed to accept other positions during the process. Apparently, candidates are no longer motivated and fewer persons submit their applications in the competitions run by NIA.

According to the legislation on NIA (besides, the polygraph testing is provided in the internal Regulation on the competition for filling in the integrity inspector positions) results of the polygraph test represent one of the criteria taken into account by the Evaluation Committee and a certain score is awarded for it. Although the test result is not decisive, it has a significant weight. There were cases when the polygraph test was failed by some candidates. However, majority of interlocutors shared the opinion that the polygraph testing of the integrity inspectors during the selection process should be excluded. Moreover, it should be noted that the accuracy of polygraph testing in general is subject to considerable doubt worldwide.

Recommendation 9: Consider excluding the polygraph testing of the candidates for positions of integrity inspectors from the selection process. The law or internal regulation should also provide a clear and transparent process (simple selection procedure) for selecting the integrity inspectors.

3.2.1.4 Status of the integrity inspectors

"Special status" of inspectors

The Law No. 132 on NIA defines in Article17 that the position of integrity inspector is a public office position with a special status. The views expressed by Moldovan interlocutors were mixed regarding the meaning of the "special status". On the one hand, some interlocutors mentioned that this status was conferred by the legislator in the light of the duties exercised by the inspector and mainly the control of the declaration subjects and thus, the status of the inspector is significantly superior to the status of any another public servant. However, the legislator did not grant any status privileges to the integrity inspectors, for example inclusion of salary incentives and social guarantees. The remuneration of integrity inspectors is regulated by the Law No. 270 on the unitary salary system in the budgetary sector and it is nothing "special" in comparison with other public servants. On the other hand, other interlocutors mentioned that the level of remuneration of the inspectors is not that low. Also, the work carried out by the inspectors is easier if compared to similar tasks handled by the investigators from other law enforcement agencies. Notwithstanding what was mentioned, most interlocutors expressed the opinion that "special status" is "special" only on paper, but in practice it is no special at all.

Recommendation 10: Due to the fact that there is lack of candidates for the positions of integrity inspectors and taking into consideration the opinion expressed by most of the interlocutors regarding the "special status", consider amending the legislative provisions by inclusion of salary incentives, social guarantees, possible right to travel free of charge in public transport, right to housing, etc. for the integrity inspectors.

"Independence of Inspectors"

Another aspect which needs to be taken into the consideration is the independence of the integrity inspectors. According to the Law No. 132 (Article 20), the inspectors are independent in their activity.

An integrity inspector shall not issue or take orders, including from the President or Vice-president of NIA, in relation to the inspections of assets and personal interests or regarding compliance with the legal regime of conflicts of interest, incompatibilities, restrictions and limitations. Any attempt of influence on the part of the President or Vice-president of NIA or on the part of any third party shall be immediately notified by the inspector to the Integrity Council. In principle, the idea of protecting integrity inspectors against interference in their activity is correct. However, while their due discretion should be protected against arbitrary case-by-case orders and influences, their independence must not be construed as permission to apply law in inconsistent or otherwise erroneous ways.

Within the practice of NIA, interpretation of such "independence" has come so far, that NIA's President and Vice-president can't ask the inspectors on the outcomes of their investigations or to request to speed up specific investigations. Another problem concerns the integrity inspectors' non-compliance with internal rules. In this situation, the president of NIA must notify the Disciplinary Board (currently, the board does not have all the members in its composition). However, the decisions of the board do not necessarily lead to the discipline of the inspectors. The team of experts considers that the integrity inspectors should be independent in their tasks and obligations when performing their job duties (e.g. verifications/controls) however, there should be tools to react on their quality of work, uniformity of procedures, disciplinary measures, etc. Integrity inspectors, at the end of the process, represent NIA as an authority. Taking this into consideration, the team of experts agrees on having a disciplinary board to ensure compliance with working discipline, timely examination of materials and disciplinary processes. It is important to be noted that such boards should have competences in disciplinary matters and not in the handling of cases by the inspectors.

Recommendation 11: Consider amending the law in order to provide that activities of monitoring, control and organization of the activity of the inspectors are carried out by the Head of the Integrity Inspectorate. However, such control shall not constitute inappropriate interference with the work of the integrity inspector, within his/ her decision-making, but take form of non-obligatory instructions, recommendations, guidance with the aim to ensure quality, objectivity and uniformity of decisions.

3.2.1.5 Procedure of work of inspectors

Law No. 132 defines different procedures for different areas (assets declaration, incompatibilities, conflicts of interest, restrictions and limitations). There are no common provisions on the basic steps / obligations / rules how the proceedings should be implemented. For example, many countries use Administrative Procedure Codes where all important principles (principle of legality, protection of the rights of parties and protection of public benefits, principle of substantive truth, principle of hearing the party, etc.) and rules of procedure (rules on applications, summons, receiving and requesting information and evidences, records, hearings, initiation of procedure, fact-finding procedure, suspension of procedure, oral hearing, presenting evidences, witnesses, statements by the parties in procedure, expert witnesses, composition of decisions, time limits, legal remedies, appeals, etc.) are defined. Such general provisions are also provided by the Administrative Code of the Republic of Moldova. Some of this principles and standards could be also reflected in the legislative/regulatory acts governing the activity of the integrity inspectors.

Recommendation 12: Consider amending the legal framework to provide more in terms of improving the standards of the activity/ rules of procedure of the integrity inspectors (defining principles and rules of procedure of the integrity inspectors).

According to the Law No. 132 (article 29), the notification submitted by a natural person or legal entity governed by public or private law shall meet the formal and substantive conditions established by the now repelled Law No190-XIII of 19 July 1994 on petition filing. According to the Methodology, a notification must meet the conditions of form and content established by the Administrative Code No. 116/2018. In practical terms, it means that anonymous notifications should not be accepted and

examined by NIA. Such notifications cannot serve as a basis for an examination. During the scoping meetings, it was mentioned that in such cases, the inspectors can start investigations on *ex-officio* basis. However, the question is whether such procedure / act would pass the court procedure / stage in a possible appeal. Moreover, the Administrative Code mentions specific format rules on filling a notification to a public institution. Article 76, Paragraph 1 of the Code stipulates that anonymous petitions shall not be reviewed. The Methodology mirrors this approach and stipulates that anonymous notifications or those submitted without indicating the postal or electronic address of the petitioner are not examined but are archived on the basis of a written note addressed to the President of NIA.

In the opinion of the experts, anonymous notifications could be (and mostly are) an important source of information on wrongdoings. In most cases, people are afraid to report such behaviour due to the revenge / retaliation possibilities although there are whistleblowers protection acts (in the case of the Republic of Moldova – the Law No. 122 on Integrity Informants/whistleblowers).

Recommendation 13: Consider amending the Law No. 132 with the provision that any kind of notification that contain substantially relevant information is accepted, no matter if it is anonymous or does not have information according to the Law No. 190-XIII as of 19 July 1994 and/or Administrative Code.

3.2.2 National and international cooperation of NIA

NIA cooperates with other institutions on different occasions and on different matters. In general, cooperation activities can be divided on "receiving", "giving" and "asking" for documents, explanations, information on national and international areas.

3.2.2.1 National cooperation

Moldovan interlocutors mentioned the following aspects regarding national cooperation:

a) The cooperation between NIA and other institutions could be improved (National Anti-corruption Centre, Anti-corruption Prosecution Office, Tax Service and other law enforcement agencies (LEAs)). Inter-institutional cooperation is also affected by the fact that NIA is not a law enforcement agency and for this reason LEAs may refuse to share requested information by NIA (especially if such information is part of ongoing criminal investigation).
    a. The team of experts agrees that NIA is not one of the law enforcement institutions and represents an independent prevention body. However, NIA's competences are very important for corruption-prevention and, for implementing its competences, NIA needs sometimes information/data from other law enforcement authorities (data on officials, financial flows of officials, etc.). Inter-institutional cooperation challenges are maintained by the fact that there are no clear provisions where the administrative procedures end and where the criminal ones start. Moldovan interlocutors suggested setting up a working group with relevant LEAs and NIA in order to decide on needed legislative amendments to address the above presented cooperation challenges. A good solution to improve inter-institutional cooperation, which is implemented in numerous countries, is signing memorandums of understanding with relevant counterparts (hereinafter: MoU). NIA has already signed several important MoUs on national level and this practice should be further consolidated with other state agencies as well.

        Recommendation 14: NIA and other institutions should prepare and sign MoUs to enhance cooperation and exchange of data/information.

    b. The LEAs do not provide official answers to NIA in order to explain the reasons for starting or refusing to start criminal investigations when notified by NIA. Such data should not only be needed for statistical reasons but also for possible proactive work by NIA.

Recommendation 15: Consider amending the Law No. 132 in a way that institutions, to which NIA submits information or requests for investigation, would be obliged to inform NIA about their findings and conclusions.

3.2.2.2 International cooperation

Moldovan interlocutors expressed a lack of international cooperation channels, particularly relevant since a large number of citizens of the Republic of Moldova are also citizens of Romania and officials can easily transfer or hide their assets in Romania. NIA has few channels or powers to cooperate with LEAs from Romania in order to investigate on the assets of the Moldovan citizens registered in Romania. What is more, there was no statistical information, at the reference date, regarding the number of requests of information issued by NIA to foreign institutions or number of accessed open source databases (local or external).

The team of experts draws attention to the International Treaty on Exchange of Data for the Verification of Asset Declarations and co-operation possibilities under the UNCAC (Article 43, para 1) and Resolution 6/4 of the sixth Conference of the State Parties to the UNCAC from 2015, whose purpose is to prevent corruption by providing for direct administrative exchange of information concerning asset declarations between the Parties of the Treaty. Respective anti-corruption bodies from the region and beyond will be able to communicate formally to each other in an effective and efficient manner compared to the current state of affairs.

Recommendation 16: Republic of Moldova should consider signing the Treaty on Exchange of Data for the Verification of Asset Declarations and co-operation possibilities under the UNCAC. In principle, the Republic of Moldova could improve attempts to conclude relevant bilateral treaties with foreign countries, but the feasibility of this requires further assessment, especially because it also depends on the availability of foreign countries to cooperate.

3.2.3 The Integrity Council

The Integrity Council (IC) is a collegial body, without being a component of the National Integrity Authority, and it consists of 7 members, selected or appointed by the following structures of the state and civil society: representative appointed by the Parliament, the Government, the Superior Council of Magistracy, the Superior Council of Prosecutors, the Congress of Local Authorities of Moldova and two representatives of civil society who are selected by the Ministry of Justice through a competition, based on a regulation approved by the Government. The IC is not a professional body, and its members are not full-time employed.

During the online meeting Moldovan interlocutors pointed out the non-active role of the members of the IC which affects their quorum and decision-making. For example, members assigned by the Superior Council of Magistracy and the Superior Council of Prosecutors allegedly cannot contribute much to the activities of IC considering their high positions in their main institutions. Some interlocutors recommended that this mechanism (IC) should be reconsidered or terminated since the effectiveness of the IC is much hampered. Besides, IC should, according to the law, adopt a series of internal documents that are necessary for NIA (Annual Report, Annual Activity Plan, Internal Strategy, etc.), but to date, some of these documents have not been adopted or have been adopted with great delay. During the scoping meetings, IC representative mentioned that in several occasions the opinions of the IC were presented to NIA on the needed improvements or changes to submitted documents, however, the feedback provided by the IC was not always taken into consideration. What is more, IC depends on NIA's support and assistance in performing its activity since IC does not have a permanent secretariat to support their daily activity - there is one person assigned by NIA President to support the secretarial activity of IC. It was also pointed out that though the law provides that IC should be provided access to state registries (in order to verify the asset declarations in regard to the inspectors and NIA's management team) this was not applied in practice. Currently, 2 integrity

inspectors provide support to the IC members in verifying the information from the state registries. IC also mentioned that it receives many petitions from citizens and declaration subjects concerning the activity of NIA's management, however it is very difficult for IC to examine such petitions considering that members of IC do not have direct access to needed registries and they do not have their own secretariat and dedicated personnel to support its activity. The team of experts was also informed that most of the IC meetings are public. Exceptions occur if other laws restrict the publicity of the meetings (e.g. when aspects related to personal data are examined). Usually, mass media is very interested in the IC activity.

Recommendations 17, 18 and 19:

- ***NIA and IC should enhance their cooperation and discuss closely on the future work and collaboration procedures.***
- ***Consider whether the role and existence of IC is needed, since currently this mechanism is not productive and hampers the efficiency of both NIA and IC.*** Countries have different practices and legal solutions in this regard. While some of them have such councils (Serbia, Montenegro, etc.***), some of them do not (Slovenia, Croatia, etc.). Therefore, the Republic of Moldova should consider the benefit of such a set up and further decide on the merits of having such a Council.***
- ***In case IC is maintained, consider providing it with a permanent secretariat to assist it in its work, prepare documentation and represent a strong communication channel with NIA. Consider granting to the IC full access to databases and other documents as needed. Such access should be granted on case-by-case basis and not in general terms (considering that giving full access is not proportionate to their obligations and rights).***

3.2.4 Trainings

The team of experts will further refer to 2 types of trainings: a) internal trainings (for NIA staff) and b) external trainings (for officials and other third parties by NIA).

3.2.4.1 Training of NIA's staff

Moldovan interlocutors mentioned that once appointed, integrity inspectors need 1-2 months to become acquainted with all control procedures and internal rules. The newly appointed inspectors do not have "mentors" at the beginning of their activity to assist them during daily tasks and obligations. There are no internal guidelines for new-comers or at least a collection of regulations, recommendations and instructions.

Contrary to what was mentioned above, the team of experts identified in NIA's activity report for 2020 that NIA established a **School for young integrity inspectors** – an initial training course with a 2-months duration, organized for the newly appointed integrity inspectors. It aims to facilitate the professional integration of the integrity inspectors, to familiarize this category of staff, on a short-term basis, with the working procedures in the field of control of assets and personal interests, compliance with the legal regime of conflicts of interest, incompatibilities, restrictions and limitations. Within this school, 5 training activities with 7 topics were organized and carried out, namely**:**

- Internal Regulations of the National Integrity Authority;
- Aspects of behaviour and professional ethics in the light of the Code of Conduct and Ethics of the employees of the National Integrity Authority;
- Theoretical and practical aspects regarding the preparation of documents; General rules for organizing the circulation of documents within the National Integrity Authority;
- Ensuring the confidentiality of information attributed to state secrecy within the activity of the integrity inspectors;

- Filling in and submitting declarations of assets in electronic format;
- Methodology for controlling assets, the legal regime of declaring assets and personal interests, compliance with the legal regime of conflicts of interest, incompatibilities, restrictions and limitations;
- Resolving the situations of conflicts of interest which fall under NIA's competence.

The team of experts assesses the establishment of the School for the young integrity inspectors as a positive step forward in ensuring an effective integration of the newly appointed inspectors.

Recommendation 20: NIA should also consider introducing mentorship possibilities for the newly appointed inspectors, so that the post-recruitment process and familiarization with the working procedures is smooth and effective.

The team of experts identified in NIA's activity reports for 2019 and 2020 that inspectors (and other staff) acquired knowledge and improved their skills within internal trainings organised with the support of foreign experts (experts from Romania, Poland, Hong Kong and Lithuania); internal trainings organised with national experts (Integrity Council, National Anticorruption Centre, National Centre for Personal Data Protection, National Centre for Judicial Expertise, etc.); Internal trainings with internal staff (Legal Department Policy Evaluation, Prevention and Implementation Department and Human Resources and Documentation Department) and study visits abroad (Romania). Due to the restriction conditions imposed by the pandemic during 2020, there was a lack of international trainings. The experts assess the mentioned trainings as *prima facie* useful and suitable.

Recommendation 21: NIA should put more emphasis on ensuring uniform practices and uniform application of the legal provisions by the integrity inspectors. This can also be achieved through permanent training activities (internal and external trainings).

3.2.4.2 Trainings of officials and third parties

In 2019, NIA organized and carried out 70 training sessions and in 2020 - 56 training sessions within different state entities. 4 353 public officials were trained by NIA in 2019 and 3 222 public officials were trained in 2020, addressing the following topics:

- Obtaining, extending and revoking the electronic signature;
- Keeping and maintaining the Register of subjects of declaration of assets and personal interests;
- Submitting the declarations of assets and personal interests in electronic format;
- Compliance with the legal regime of declaration of assets and personal interests;
- Compliance with the legal regime of conflicts of interest;
- Compliance with the legal regime of incompatibilities, restrictions and limitations.

NIA also organised different media campaigns, printed and distributed information materials (brochures, leaflets, etc.) and guides.

Thus, in 2020, there is a 11% decrease in the number of persons trained, due to the COVID-19 pandemic restrictions (including cancelation of 2 information campaigns for employees of the territorial subdivisions of the Ministry of Internal Affairs and the State Chancellery).

The team of experts assesses the above-mentioned trainings and distribution of information materials as important, especially in 2020 which was affected by pandemic restrictions. The joined trainings performed by NIA in partnership with other anti-corruption institutions (NAC) were positively assessed and further consolidation of this practice would be advisable.

3.3 E-integrity system and databases

According to the Law No. 132, NIA shall operate several electronic systems:

i. the electronic register of subjects of declaration,
ii. the system for the completion of declarations of assets and personal interests in electronic form,
iii. the electronic system for random distribution of files/cases among the integrity inspectors, and
iv. the register of persons who are prohibited to hold public functions. The register is available on the website of NIA.

In 2018, NIA launched the e-Integrity system, which has been subject to continuous development since then. The Government Decision No. 228 of 10 April 2020 approved the Regulation on the organization and functioning of the automated information system e-Integrity. The Regulation determines, amongst other things, the main functions of the e-Integrity system (Article 4). These include, for example, the submission and signing of asset declarations by the declaration subjects (point 1), automatic verification of declarations to detect discrepancies between the data from the declarations and data from the state registers (point 3), management of control files initiated based on notifications submitted by natural and legal persons as well as initiated *ex officio* investigations (point 6), entry and renewal of information in the electronic register of declaration subjects (point 9), registration, correction and removal of prohibitions to hold public positions as well as search, review and import of data in/from the register of persons prohibited to hold public positions (points 10-13). The e-Integrity system comprises a mechanism of automatic analysis of declarations, which envisages comparison of data from the asset declarations with data from other state registers/systems: the state register of transport, the state register of legal persons, the state register of population, the register of immovable property, the information system of the State Tax Service (Article 18), etc. The e-Integrity system ensures interaction and exchange of data through the governmental platform Mconnect with the above-mentioned systems.

The e-Integrity system represents a useful tool of information and case management within NIA. The system has several advantages and allows NIA in certain aspects to exceed the minimum requirements set by law. For example, the e-Integrity system makes declarations of assets and personal interests publicly available immediately after their electronic signature although the deadline for public disclosure allowed by the law is 30 days from the expiration of the deadlines for submitting the declarations (Article 9, Paragraph 1 of the Law No. 133).

However, according to the management of NIA, the introduction of automatic cross checking with other state databases is only planned for 2021. The information included in various state registries is of different format, and, as stated by NIA in its written response for this assessment, the current results of the automated cross checks need to be calibrated and reconfigured. Hence, it must be concluded that automated analysis of declarations is currently possible only to a limited extent. Automatic cross checks and analysis could allow for time savings in the activity of NIA's Integrity Inspectorate.

Recommendation 22: NIA should continue efforts towards developing and constantly updating the electronic mechanism for automatic verification and cross checks with other state registries.

The analytical functionality of the e-Integrity system could be strengthened in several ways. A useful component would be the tools of statistical analysis of declared data, which would generate indicators of different aspects of the dataset. One type of indicator could be statistical outliers, i.e.

- declarations with, for example, the greatest amounts of savings,
- amounts of income from certain categories of sources,
- total area of immovable property,
- value of assets transferred to other persons,

- value of purchased shares/equity, etc.

The system should allow the selection of outliers based on thresholds set by the user, for example, 5%, 10%, or 15%. Other types of indicators could be the relations between different categories of data. These indicators would reflect, for example,

- the relation of the income gained and the value of newly acquired assets, or
- the relation between the income gained and the amount of debt.

In this case, it would be possible to select declarations where the proportion of the asset or debt value constitutes the highest percentage relative to the income. These tools could serve as a generator of many kinds of additional criteria for the *ex officio* selection of declarations for verification.

Another potentially useful component would be a database of conclusions of ascertaining documents, court decisions and legal consequences of identified breaches, which could be used for the analysis of the declarations. For example, it would be possible to search for correlations between certain parameters of the declarations, for example, the amount of total income, the amount of income from certain categories of sources, ownership of certain kinds of assets, or ownership of assets of certain value on the one hand and the frequency of identified breaches of the legal regime of declaration of assets and personal interests on the other hand. Once a certain record of irregularities has been accumulated, it is possible to use these correlations for future selection of declarations for verification.

Recommendation 23: Consider developing and integrating tools of statistical analysis (statistical outliers, relations between different categories of data, associations between the declared data and outcomes of proceedings, etc.) in the e-Integrity system and use them, along with other methods, for selecting declarations for verification.

In its current form, the e-Integrity system does not and is not meant to serve for monitoring conflicts of interest. One of the recent developments in prevention of corruption in several countries has been **launching and operating electronic systems, which link information on personal interests of public officials with decisions and transactions made by public agencies**.

One example of this kind of system is the **ex-ante verification system for the detection of situations that may generate conflicts of interest in public procurement procedures in Romania.** The mechanism (the Integrated Information System for the Prevention and Identification of Potential Conflicts of Interest) is based on a separate law[4] and is operated by the National Integrity Authority of Romania. A key element of the mechanism is an electronic prevention system, which takes the information from the integrity forms filled in by contracting entities which contain data on the procurement procedure, the decision maker, the evaluation commission, engaged consultants and experts, data on bidders / candidates, measures taken to eradicate potential conflicts of interest. The electronic system raises notifications regarding potential conflicts of interest (integrity warnings), which are then validated by the integrity inspectors of the National Integrity Authority and communicated to designated responsible persons.

Another example is the online application *Erar* that accumulates information on business transactions of public sector bodies of Slovenia.[5] Formerly called *Supervizor* and developed by the Commission for Prevention of Corruption in co-operation with other bodies, the Erar system indicates contracting parties, recipients of funds, related legal entities, dates and amounts of transactions, and purposes of money transfers. The application provides insight in financial flows between the public and private sectors not only to the public but also to regulatory and supervisory bodies. The application helps implementing the mission of the Commission for Prevention of

[4] The Romanian Law on the Establishment of a Mechanism for Preventing Conflicts of Interest in the Procedure for Awarding Public Procurement Contracts [Lege Nr. 184/2016 din 17 octombrie 2016 privind instituirea unui mecanism de prevenire a conflictului de interese în procedura de atribuire a contractelor de achiziție publică] available at integritate.eu, accessed on 5 May 2021.

[5] The system is accessible through the website https://erar.si.

Corruption – strengthening the rule of law, integrity and transparency, mitigating corruption risks and conflicts of interest.

Recommendation 24: The current stage of development and capacity of NIA may not allow for creating new automated tools, but, in the long term, consider introducing relevant legal amendments and supplementing the functionality of the e-Integrity system with a component for semi-automatic monitoring of conflicts of interest.

3.4 Controls (verifications) – general matters

According to Article 25, Paragraph 4 of the Law No. 82, NIA is responsible for applying the following integrity control measures in the public sector:

a) control of declarations of assets and personal interests;
b) control of the observance of the legal regime of conflicts of interest;
c) control of the observance of the legal regime of incompatibilities, restrictions and limitations.

In terms of controls and verifications, the mandate of NIA is multifaceted. According to the Activity Report for 2020, NIA initiated 400 control proceedings (125 related to assets, 156 related conflicts of interest, 114 related to incompatibilities, 4 related to restrictions, and 1 related to limitations).

3.4.1 Random distribution

Declarations of assets and personal interests subject to control as well as notifications received by NIA are distributed randomly among integrity inspectors (Article 27, Paragraph 4; Article 30, Paragraph 1; Article 37, Paragraph 1 of the Law No. 132). The law lists circumstances when redistribution of the randomly assigned cases is possible. Neither the law nor other documents provided for this analysis envisage consideration of the workload of the integrity inspectors and variations in complexity of particular controls.

Recommendation 25: Consider monitoring the distribution of the workload among integrity inspectors to check if any imbalances in this regard create bottlenecks in the activity of individual inspectors and whether there are any general inefficiencies in the use of human resources caused by the distribution system.

3.4.2 Cooperation with the subjects of control

The Law No. 132 regulates several aspects of co-operation with the subjects of control during the control proceedings. According to Article 33, a person whose assets and personal interests are subjected to control shall have the right:

i. to be informed of the documents and acts in the file, including the depersonalized notification;
ii. to be informed of the initiation of inspection/control;
iii. to be assisted by a lawyer or by a representative based on a mandate or power-of-attorney,
iv. to present the data and information that he/she may deem necessary,
v. to be informed of his/her rights and obligations,
vi. to challenge, in accordance with the lawful provisions, the documents issued by the integrity inspector.

Most of these rights are fully justified and non-controversial. However, two aspects could be detrimental to the effectiveness of the controls at least theoretically. One of them is the right of the person to acquaint himself/herself with the notification. Even if formally depersonalized, it may contain hints about the author of the notification, specific details about a situation known to few individuals or about the position of the author. Even handwriting may help guessing the identity of the person. The explanatory memorandum of the Recommendation CM/Rec(2014)7 of the Council

of Europe Committee of Ministers on the protection of whistleblowers[6] argues that, where it is impossible to proceed without relying directly on the evidence of the whistleblower (and revealing his/her identity), the consent and co-operation of the whistleblower should be sought, and any concern addressed.[7]

Recommendation 26: The depersonalized notification as such should be exempt from the documents that the person subject to control has the right to become familiar with. Only relevant facts from the notification should be provided as necessary for the proceedings, thus reducing the risk that information not directly relevant reveals the author of the notification.

Being informed about the initiation of a control may facilitate obstruction in some cases. The subject of control may undertake efforts to destroy evidence, influence other persons who may potentially provide evidence, or even attempt forging evidence. From the point of view of the rights of the person who is subject to control, it is important that he/she is informed and heard before the finalization of the control so as to have ample time to present the data and information that he/she may deem necessary. For comparison, consider criminal proceedings where, according to the European Convention on Human Rights, information on the nature and cause of accusation must be submitted to the person charged with a criminal offence promptly, i.e. in good time for the preparation of his/her defence but not necessary at the start of the investigation (Article 6, Paragraph 3 of the ECHR).[8] Another example for comparison is the Fiscal Code of Germany, according to which, before an administrative act affecting the rights of a participant may be issued, he/she should be given the opportunity to comment on the facts relevant to the decision (Section 91).[9]

Recommendation 27: Consider abolishing the right of the person subject to control to be informed of the initiation of the control and substitute it with a notification for the person to be able to exercise his/her rights to be heard before the finalisation of the concluding act.

3.4.3 Control timeframes

Another problem concerns the **timeframe to control the violations of the legal regime of conflicts of interest, incompatibilities and restrictions**. The Law No. 132 on NIA does not provide for any limitation period to perform the controls by NIA. In practice, there were many cases when the conflicts of interest were not reported or solved by public officials and the sanctions applied by NIA years later were not relevant any more (e.g. the contract that was signed in a conflict of interest situation was already executed and could not be annulled, etc.). According to the Law No. 132, in case it is established that a conflict of interests was not declared or solved, the integrity inspector shall prepare a protocol on the contravention in this case and shall refer it to the court for review in accordance with the procedure established by the Contravention Code of the Republic of Moldova which contains a statute of limitations of 1 year (Article 30). For comparison purposes, in other countries, the timeframe to control the violations of the legal regime of conflicts of interest is in average 2-3 years. For example, Slovenian Integrity and Prevention of Corruption Act defines that the Commission for the Prevention of Corruption may initiate the procedure of determination of a conflict of interest within two years from the performed official act. Providing a limitation period for NIA to perform such controls is important considering the severity of the sanction applied in case any conflicts of interest, incompatibilities or restrictions of operation are identified – prohibition to hold public office for 3 years.

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[6] Council of Europe, Committee of Ministers, Recommendation CM/Rec(2014)7 on the protection of whistleblowers accessed on 15 May 2021.
[7] Council of Europe, Committee of Ministers, (2014), Recommendation CM/Rec(2014)7 on the Protection of Whistleblowers and Explanatory memorandum, para 71, accessed on 15 May 2021.
[8] European Court of Human Rights (2021), Guide on Article 6 of the European Convention on Human Rights, p.74. https://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf, available at https://www.echr.coe.int/, accessed on 15 May 2021.
[9] German Fiscal Code, Section 91 [*Abgabenordnung*], available at http:// www.gesetze-im-internet.de/, accessed on 15 May 2021.

Recommendation 28: Consider providing 3 years of statute of limitations for investigating conflicts of interest, incompatibilities and compliance with restrictions of operation.

3.5 Control of declarations of assets and personal interests

3.5.1 Competence of NIA

According to Article 6, items a) and c) of the Law No. 132, NIA shall exercise the control of assets and personal interests and shall find and sanction any breaches of the legal regime of assets and personal interests. In terms of oversight and control, NIA is responsible for the following aspects:

a) collecting, storing and publishing declarations of assets and personal interests,
b) controlling the timely submission of the declarations,
c) conducting checks on assets held by the subjects of declaration, ascertaining if there is any substantial and unjustified difference between the income gained during the exercise of a mandate, public function or office and the assets acquired, and referring to the court with requests for an order to seize unjustified assets,
d) establishing the existence of errors or missing data in the declarations and informing the prosecution body and/or the tax authority thereof,
e) establishing contraventions,
f) keeping the electronic register of subjects of declaration (Article 7. Paragraph 1).

The law differentiates between two types of controls performed by the integrity inspectors:

i. control of the declarations of assets and personal interests (Article 27), and
ii. control of assets and personal interests (Article 28).

3.5.2 Control activity

In 2020, after the deadline for the submission of annual declarations, 1332 declarations were distributed for control among integrity inspectors through the e-Integrity system. This type of verifications represents the highest number of verifications performed by NIA, and according to information provided during the scoping meetings, it can amount to 70-100 controls performed by each inspector, per year.

Based on the information made available for this assessment, it is difficult to assess objectively whether such number of controls is sufficient. It is relatively small (approx. 4%) relative to the total number of annual declarations – 65192 in the 2020. On the other hand, the available information is too limited for fully assessing how complex and time consuming the verifications are. Comprehensive and largely manual verifications of 1332 declarations could represent a major workload considering the number of integrity inspectors available to NIA. The full development of automated verification capabilities should create a chance to significantly increase the number of controls. Ideally, in the course of five-ten years, every public official should be subject to such control.

Recommendation 29: Develop and improve the automated verification capabilities with the aim of reaching the ability to verify in-depth at least 10-20% of declarations per year.

3.5.3 Selection of declarations for control

According to the Law No. 132, at least 40% of the controls of the declarations of assets and personal interests carried out during a calendar year shall refer to holders of positions of public dignity, which will be randomly selected for *ex-officio* control (Article 27, Paragraph 3). Since 2019, the President of NIA determines the categories of public officials whose declarations shall be inspected every year. As mentioned above, in 2020, 1332 declarations were randomly distributed among integrity inspectors through the e-Integrity system based on the Order No. 41 of 12 May 2020 on the *ex-officio* control of the declarations submitted for the year 2019. The distribution followed reportedly the assessment

of risk areas, and the selection included 101 Members of Parliament, 413 judges, 642 public prosecutors, 176 managers, deputies and public servants of the Chisinau City Hall.

By selecting a large number of Members of the Parliament, judges and public prosecutors, NIA apparently attempts to meet expectations that anti-corruption efforts target high-level officials. It is also entirely justified to employ a risk-based approach. However, it is recommendable that NIA develops a methodology for the assessment of risks, based on which genuine risk-based selection could be carried out.

Recommendation 30: To better direct the efforts towards officials who have more likely committed violations, in the long term, the selection of declarations should be based more on a systematic risk assessment. Among risk criteria could be above average informal indicators of corruption (including media reports and research) and formal indicators of corruption (detected corruption offences, complaints taking place in particular institutions or acts committed by a particular category of officials).

3.5.4 Content of control

According to the Law No. 132 the inspection of declarations consists of verifying the submission in due time of the declarations and checking compliance with the formal requirements (Article 27, Paragraph 1).

According to the Methodology, the control of the declarations comprises the following actions:

i. verification of the submission of the declaration,
ii. verification of the grounds and the date of submission of the declaration,
iii. verification if the information is complete and in accordance with the Regulation on how to complete the declaration of assets and personal interests, approved by the Order of NIA's President,
iv. verification of declared information to identify possible substantial differences between the acquired wealth and the obtained incomes, conflicts of interests and incompatibilities.

The parts of the Methodology made available for this assessment do not clarify how it is possible to identify any substantial differences within this procedure (formal control of the declarations). However, the findings of this control are very important as they may trigger an in-depth control of the violation of the legal regime of declaration of assets and personal interests. In principle, checking purely formal compliance of the declarations with the provisions of the law does not represent an appropriate tool for ascertaining the economic plausibility of a declaration. Theoretically, there is a risk that a formal verification fails to detect economically implausible declarations.

The Western Balkan Recommendation on Disclosure of Finances and Interests by Public Officials provides an idea of the economic plausibility of a declaration by presenting an argument that "for the identification of undeclared cash-flows, the oversight body needs to balance the incoming and outgoing cash-flows, calculating also a lump sum for daily expenses because not all expenditures are and can be included in a declaration. The verification should not limit itself to comparing data but should aim at detecting undeclared cash-flows and their possible illicit origin.".[10] The Recommendation presents a calculation algorithm for determining the plausibility of a declaration in the below matrix.

Period	Incoming side	Outgoing side
Beginning	Existing assets	
During	All coming in	All going out
End		Existing assets
Total incoming must = total outgoing		

[10] EIN (2014), *Western Balkan Recommendation on Disclosure of Finances and Interests by Public Officials*, Ethics and Integrity Network of the Regional School of Public Administration, available at https://www.respaweb.eu/, accessed on 15 May 2021.

The details of the algorithm can be adjusted to match the terminology and the system of declarations in the Republic of Moldova, but to serve as a useful tool for detecting suspicions of illicit enrichment, the verification of declarations should have a standardized assessment of plausibility as one of its outputs.

Recommendation 31: Consider complementing the scope of the inspections of declarations as per Article 27 of the Law No. 132 with the element of* prima facie *assessment of the economic plausibility of the declarations and adjusting the Methodology accordingly as necessary.

3.6 Control of assets and personal interests

3.6.1 Competence of NIA

The competence of NIA to control assets and personal interests is determined by the same provisions as the competence to control the declarations of assets and personal interests.

3.6.2 Control activity

In 2020, 125 out of 400 protocols on the initiation of controls concerned assets. In this area, there was a high rate of refusal to initiate controls (approx. 58% compared to the overall rate of refusal of 46.8% for all kinds of controls). The number of ascertaining acts regarding violations of the legal regime of assets has been growing in 2018-2020 (respectively 0, 10, and 14) but still remains low. Of all ascertaining acts on breaches issued by the NIA in 2020, the acts that concern assets constitute only 6.7% (14 acts out of 210). These indicators reflect that more could be done to improve the effectiveness of the legal framework and NIA's performance.

One of the potentially most effective tools of NIA is the possibility to request confiscation of the value of unjustified assets. However, the team of experts could not obtain statistical data regarding the number of such requests and the values concerned (such statistical data is not systematised). According to the interlocutors from NIA, in all cases of breaches regarding assets, some substantial differences between income and assets were detected. The potential confiscation of assets can be one of the strongest deterrents for potentially corrupt public officials. The number of requests for confiscation, the values subject to the requests, and the share of successful requests should be among key performance indicators of NIA's control activity.

Recommendation 32: NIA should collect, systematise and publish comprehensive statistical data on obtained confiscations.

3.6.3 Triggers of control

According to Article 28, Paragraph 1 of the Law No. 132, NIA shall inspect assets and personal interests either *ex officio* or following a notification. The President or the Vice-president of NIA, or an integrity inspector shall request an *ex officio* inspection of assets and personal interests:

- when it is established that data is missing from the declaration,
- in case of failure to submit the declaration or late submission of the declaration, or
- based on public information (Article 28, Paragraphs 2 and 3).

The grounds to initiate *ex officio* controls are formally too narrow. For example, it could be argued that suspicion alone rather than an established fact of undeclared data should suffice for initiating control proceedings. Apparent economic implausibility of a declaration or a set of declarations of the same person also should be explicitly recognized as a trigger for the inspection of assets. The authorities argued that in practice the right to initiate *ex officio* control proceedings is not subject to any undue restraints. However, in the case of an implausible declaration launching of the inspection should not only be a right but also an obligation.

Recommendation 33: Stipulate an explicit obligation to verify assets in case when a* prima facie *economically implausible declaration is detected. Moreover, to avoid

the risk that formal controls of declarations of assets and personal interests as well as limited prior checks (see the next section) systematically leave certain officials with dubiously acquired assets undetected, consider choosing a certain number of public officials for full asset control based on random selection.

3.6.4 Prior check

According to Article 31, Paragraph 1 of the Law No. 132, notifications submitted by natural persons or legal entities are subject to prior checks to be carried out within 15 days. The goal of the preliminary check is to verify compliance with formal conditions and identify any reasonable suspicions in relation to the infringement of the legal regime of the declaration of assets and personal interests. In other words, the preliminary check leads to the decision of an integrity inspector to initiate or refuse to initiate a verification.

The documents (including parts of the Methodology) provided for this assessment do not specify in detail what level of suspicion shall be established in the prior check in order to initiate a verification and they do not describe the procedure of the prior check. According to the authorities, sometimes integrity inspectors find it difficult to gather the evidence needed for the decisions within the period of 15 days. Notably, reaching a decision is even more difficult when the notification, based on which the preliminary check is carried out, does not contain enough information and requires additional details. Delays in accessing certain information, the need to follow up with requests to received information, or just the large workload of the integrity inspectors at a particular period of time may lead to situations where suspicions can neither be dismissed nor reasonably affirmed upon expiry of the 15 days limit. Importantly, 15 days is also the timeframe for other persons to answer requests for documents and information (Article 32, Paragraph 4 of the Law No. 132), which in many cases may fully exclude a possibility to obtain information for the prior check upon request. Thus, compulsorily hasty prior checks lead to high risk of prematurely rejecting in-depth controls.

Recommendation 34: Unless already done in the parts of the Methodology not available for this assessment, define clearly the steps to be made within prior checks. It is strongly recommended to increase the time limit of prior checks. In the elaboration of such amendment, consult the management of NIA and the Integrity Inspectorate to determine an adequate time limit sufficient for grounded dismissal of suspicions or for the establishment of reasonable suspicions in most cases.

3.6.5 Content of control

According to the Methodology, the object of the control is:

i. assets of the person subject to control,
ii. income of the person subject to control,
iii. changes in the assets during the exercise of the mandate, etc.,
iv. substantial differences generated by the changes of wealth in comparison to the income,
v. the correct and complete declaration of the data.

The Methodology defines unjustified property as goods, part of goods or several goods in respect of which a substantial difference has been calculated that could not be justified by the subject of the declaration. As per Article 2 of the Law No. 133, substantial difference is a difference that exceeds 20 average national monthly salaries between assets acquired and the income gained by the subject of the declaration together with his/her family members or his/her cohabitant during his/her mandate or in his/her public function or position of public dignity. The definition of substantial difference rests on comparison between wealth and income and does not take into account the expenses that do not lead to the accumulation of wealth. According to the Methodology, in calculating the substantial difference, account shall be taken of expenses related not only to the transfer of ownership but also use of goods (for example, rental of transport, purchase of a holiday package or gym membership, etc.). However, there seems to be no legal grounds for considering such expenses

in the calculation of substantial difference, and conclusions based on this approach could be vulnerable to legal challenges.

Recommendation 35: Revise the definition of "substantial difference" and express it in the following principal terms: a difference that exceeds 20 average national monthly salaries between assets and savings of the declarant at the start of period when he/she became subject of declaration and income during the period under review, including income of members of the family and cohabiting spouse, on the one hand, compared to assets and savings at the end of the period under review including expenses during the inspection period, on the other hand.

The documents provided for this analysis do not contain a formula for calculating the substantial difference. Hence, the team of experts could not assess how various aspects of the declarants' financial situation, for example, savings and loans are taken into account. The information communicated during the scoping meetings was somewhat ambiguous. According to one interview, each inspector uses a formula to calculate assets acquired and expenditures incurred by subjects of declaration. On the other hand, according to written responses provided by NIA, there is no such formula/typified equation.

Recommendation 36: Unless a standard formula/equation for calculating the substantial difference already exists, it must be developed and approved.

The Methodology defines unjustified property as goods, a part of goods or several goods in respect of which a substantial difference has been calculated that could not be justified by the subject of declaration. However, it may often not be possible to link a substantial difference between wealth and income to particular goods. Often it would be the totality of property acquired that exceeds income without grounds for linking the substantial difference to any particular piece of property. The team of experts could not assess whether the definition has caused any challenges in practice.

Recommendation 37: Clearly determine in the Methodology that unjustified property shall be expressed primarily as value, which in concrete cases may or may not be linked to concrete goods.

According to Article 31, Paragraphs 3 and 5 of the Law No. 132, an integrity inspector is entitled to request from natural persons or legal entities governed by public or private law, including financial institutions, the documents and information that it needs in order to conduct an inspection as well as request information from international organizations and associations, in accordance with the international treaties to which the Republic of Moldova is a party. Article 20, Paragraph 1of the same law also defines the right of an integrity inspector to obtain information.

During the scoping meetings, the interlocutors communicated that natural persons and entities are generally responsive to NIA's requests of information for verification purposes. Moreover, according to NIA's representatives, the agency has effective request-based access to data from financial institutions, which is a common area of difficulties especially in countries where bank secrecy is invoked as grounds for denying access to the information. However, the need to rely on request-based access to public databases (see obstacles to automatic cross checks in Section 3.3 above) remains a source of inefficiency. In addition, the team of experts was informed that the cadastre system contains data regarding only half of properties in the Republic of Moldova. If so, this is a significant obstacle for efficient verification, but its resolution is beyond the competence of NIA and the scope of the anti-corruption policy alone.

According to the Methodology, information extracted from the databases, which is of interest for the control file, will be obligatorily duplicated with written requests, in the address of the public institutions holding the databases, and the official answers received will be attached to the file. This requirement may be associated with issues of legal or technical status or reliability of data in the context of the Republic of Moldova, which is beyond the scope of this analysis. However, there should not be any insurmountable reason why data directly drawn from public registers could not serve as reliable evidence without paper backup.

Recommendation 38: To reduce the administrative burden, consider changing the procedure to require physical paper excerpts from public databases only when subjects of declaration challenge the particular piece of information and claim that it is wrongly presented.

According to the management of NIA, it is impossible to investigate assets located abroad. Although such requests have been submitted with the support of the Ministry of Justice, NIA did not receive answers to its requests. This is a common challenge for bodies auditing declarations of public officials in many countries, and it should be addressed (see the section 3.2.3.2 above).

3.6.6 Other specific issues in the control of assets

This analysis is not a full assessment of the system of declaration of assets and personal interests. However, the effectiveness of NIA, which is the subject of this report, cannot be separated from the subject of the design and implementation of the declaration system. The Law No. 133 forms a generally adequate basis for the declaration system, while NIA has managed to ensure the stable operation of the system. However, certain elements of the declaration system require improvements.

3.6.6.1 Controls of third persons

Controls concerning third persons with whom subjects of declaration have carried out transactions were recognised as a challenge by the interlocutors during the scoping meetings. Extension of the scope of controls to related persons in case of justified suspicion is one of the conditionalities included in the Memorandum on Macro-Financial Assistance for the Republic of Moldova (signed between the Republic of Moldova and the European Union in 2020). When NIA attempts to verify the authenticity of certain transactions, for example, a provided loan or sale-purchase, it is relevant to verify the capacity of the counterparts to provide the assets that were declared by the declaration subjects. For example, if a public official declares an amount of funds borrowed from another physical person and explains his/her purchases with the help of the borrowed money.

In the international practice, there are some examples of systems where oversight bodies for asset declarations of public officials are authorised to make certain verification steps regarding persons who are not themselves declarants or family members but represent other persons whose data are covered by the declarations of public officials. For example, in Armenia, the Commission for Prevention of Corruption may request a declaration from each person who is a party to a declared transaction or subject to declaration or from a person to whom specific property which is used by the declarant may belong (with ownership rights). In certain countries, for example, in Latvia the tax administration handles declarations of public officials and data on suspected disproportionate expenses by third persons can be directly fed into risk monitoring systems of taxpayers in general. Considering this, the current proposals under development by the Moldovan authorities as to the extension of verifications to other persons beyond family members (who may formally hold assets of subjects of declarations or who have provided donations to subjects of declaration) represent a step in the right direction. Meanwhile, the expansion of the competence of NIA in this area may lead to considerable broadening of the circle of persons subject to controls performed by NIA. Considering the existing limitations of the capacity of NIA and the large number of subjects of declaration, it can be questioned whether NIA is able to implement such competence in the short-/mid-term.

Recommendation 39: In addition to the currently proposed extension of the competence of NIA to carry out verifications concerning persons with whom subjects of declaration have had transactions, consider developing a swift inquiry mechanism between NIA and tax authorities as to whether the latter possess data that can explain expenses above certain amounts of third persons.

The experts also note positively the initiatives of the authorities towards redefining the notion of cohabitant considering that the current definition of cohabitant, which includes the element of living together with the subject of declaration for at least 183 days during the previous fiscal year, renders verification virtually impossible.

3.6.6.2 Values of assets

A major issue related to the declaration system in the Republic of Moldova is the kinds of value of assets that subjects of declaration shall declare. According to the declaration form (Annex 1 of the Law No. 133), the values to be declared are as follows:

i. objects of real estate – values in the land register or values according to documents certifying their origin,
ii. vehicles and other means of transport – values according to documents certifying their origin,
iii. other movable property – estimated values,
iv. shares/ equity – purchase values,
v. investments, obligations, cheques, bills of exchange, loan certificates, direct investments in the national currency or in foreign currency.

According to the information communicated during the scoping meetings, a common manner in which the value of declared assets is decreased is by artificially diminishing the values in the sale-purchase contracts, especially for vehicles, which enable subjects of declaration to pretend that their expenses have been smaller than they were in fact. In the Memorandum on Macro-Financial Assistance between the Republic of Moldova and the European Union (2020), the authorities committed to amend the legislation in order to provide for the declaration of the assets at their real market value.

In the international practice, it is relatively rare to require the declaration of market values. At a first glance, the declaration of the market values may seem attractive because these values reflect the real wealth of declarants, and the declaration of market values of acquired assets would seemingly prevent situations where certain public officials strangely keep on acquiring valuable assets at unbelievably low prices leaving ordinary citizens wondering how come that such excellent bargains were possible.

However, there are also downsides. Declarants would find it challenging to provide market values because these values may be volatile and are somewhat subjective.[11] A good-faith declarant would either have to demand and pay for the valuation of the property or take the risk of declaring a subjective estimate under fear of having submitted false data. Moreover, in essence, it is the real transaction value rather than an abstract market value that is relevant for assessing whether a person had the means to purchase the property.

Generally, it would be more efficient for the oversight body (NIA) to develop methodologies and practices of determining values of different kinds of assets. For assets such as real estate and vehicles, it should be possible to identify reference values from the market. Instead of directly obliging subjects of declaration to declare market values, Republic of Moldova could opt for a legal mechanism obliging declarants to justify with documented evidence why an asset was, at the time of acquisition, indeed worth less than the estimated market value (for example, because it was damaged). In case of failure to provide such justification, an act of finding unjustified property would be drawn up.

> ***Recommendation 40: Explore legal ways to oblige declarants to justify with documented evidence unusually low transaction value of acquisitions compared to reference market value determined by NIA. The same obligation could be applied regarding unusually high transaction values in situations when subjects of declaration have sold assets.***

Technically, such an obligation could be established by adding a relatively minor supplement to Article 31, Paragraph 6 of the Law No. 132, which currently obliges an integrity inspector to request information and evidence to justify detected major differences between the declared income and owned assets.

[11] Rossi, I. M., L. Pop, T. Berger (2017), *Getting the Full Picture on Public Officials, A How-To Guide for Effective Financial Disclosure*, International Bank for Reconstruction and Development / The World Bank, p. 38, available at https://star.worldbank.org/ , accessed on 15 May 2021.

According to Article 32, Paragraph 7 of the Law No. 132, in view of clarifying inconsistencies between the declared and actual values, an integrity inspector may order an external expertise. According to interlocutors, the current situation regarding NIA's possibilities to assess the value of assets is not satisfactory. In particular, the expert must have access to the asset to perform the expertise. It becomes problematic when the owner does not grant permission to access the property for an expert review. The solution proposed by Moldovan authorities is to envisage the right of an integrity inspector to order external evaluation, including based on conditions of the Law No. 989 on Valuation Activity. Since the overall framework on evaluation of assets in the Republic of Moldova is beyond the scope of this analysis, the authors of this report have no reason to challenge the proposed solution. Notably, also in the Memorandum on Macro-Financial Assistance signed between the Republic of Moldova and the European Union, the country committed to extend the competences of integrity inspectors by allowing them to request the evaluation of assets from independent evaluators. This appears especially important, considering the insight shared by some of the interlocutors that the values of real estate properties in the cadastre system do not correspond to the market values (as is a common case in other countries as well).

Recommendation 41: Implement the recommendations and solutions previously proposed for the Republic of Moldova to facilitate NIA's possibilities to obtain independent expert evaluations of assets.

According to Article 32, Paragraph 8 of the Law No. 132, the person subject to control has the right to perform expertise on his/her own account. Further clarification seems to be needed regarding the bearing of such expertise on the conclusions of controls performed by NIA. Is NIA in any way obliged to accept findings of such expertise and, if so, under what conditions? Are there standards that such expertise must comply with in order for its conclusions to be regarded as reliable? Similar questions may arise regarding the provision of the Methodology, which envisages that, in case of reasonable suspicion as to the value of a good, an inspector shall request from natural and legal persons confirmatory information relating to the value of the alienated good (for the benefit of the subject of declaration under control). While such requests are an entirely reasonable step in control proceedings, NIA should take due consideration that unreliable private information does not undermine the potential findings of breaches.

Recommendation 42: Unless already done in the parts of the Methodology not available for this assessment, NIA should consider developing and applying internal guidance as to what kind of expertise performed by the person subject to control and what confirmatory information provided by third persons are considered reliable.

3.6.6.3 Presumption of levels of expenditure

According to the information communicated during the scoping meetings, the assessment of purchases paid in cash (for example, a purchase in an agricultural market or a purchase of an expensive bag in a store, etc.) represent difficulties for NIA compared to assessing purchases made by bank transfer. The parts of the Methodology available for this assessment and information from the scoping meetings do not provide an exhaustive insight into the scope and the level of detail that NIA aims to find in regard to the expenses of the declaration subjects. In the international practice, it is unusual to investigate smaller individual purchases for the assessment of the commensurability of income and expenditures. Such inquiries could be extremely time consuming as they might involve tens or even hundreds of requests in a single probe. As a rule, only expenses above a defined value threshold should be subject to targeted verification. Instead, an efficient approach is to use certain statistics-based assumptions about expenses and add them as lump sums to the calculation of the balances of incoming and outgoing cash flows.

Recommendation 43: Unless already done, NIA should add an annual subsistence minimum or a similar value such as the household expenditure per capita based on national statistics of the Republic of Moldova to the outgoing cash flow of each

subject of declaration and related persons (separately or jointly as a household) subject to control of assets.

3.6.6.4 Time period covered by the declarations

Although NIA did not raise this as a challenge, a potentially concerning feature of the declaration is the period of the acquisition of wealth that should be reflected in the declaration. Namely, according to Article 6, Paragraph 1 of the Law No. 133, the annual declaration, which shall be submitted by 31 March, discloses incomes earned in the previous fiscal year and assets held as of the date of submission of the declaration. It is to be noted that any financial audit needs an unequivocal auditing period. When data regarding income cover the period 1 January – 31 December of the previous year but data on, for example, savings reflect the situation as of 15 March this year, the verification becomes unnecessarily complicated and the initial analysis cannot be automated.

Recommendation 44: Ensure that all declared data reflect the income and asset situation in uniform and unequivocal periods of time.

3.7 Conflicts of interest

3.7.1 Competence of NIA

NIA has the mandate to check the compliance with, find and sanction, breaches of the legal system of conflicts of interest (Article 6, Items b) and c) of the Law No. 132. The obligations of public agents include avoiding conflicts of interest and declaring conflicts of interest and whenever they occur (Article 14, Paragraph 2 of the Law No. 82; Article 12, Paragraph 4 of the Law No. 133).

Highest public officials, including district presidents, local councillors and other managers of public organisations shall report real conflicts of interest, in which they find themselves, to NIA (Article 12, Paragraph 7 of the Law No. 133), and NIA shall settle the conflicts of interest (Article 4, Paragraph 5). NIA shall register these reports (declarations) in the register of declarations on conflicts of interest.

3.7.2 Control activity

In 2020, 156 out of 400 protocols on the initiation of control concerned conflicts of interest. In this area, there was the lowest rate of refusal to initiate control (approx. 37% compared to the overall rate of refusal 46.8% for all kinds of controls). The number of the ascertaining documents of breaches in the area of conflicts of interest has been growing in 2018-2020 (respectively 18, 60, and 110). Of all ascertaining acts on breaches issued by NIA, the largest share (110 of 210 in 2020) concerned conflicts of interest. According to the stakeholders, the high number of controls in this area is largely due to notifications from citizens concerning violations of the legal regime of conflicts of interest committed by local elected officials (50 of 110 acts on breaches related to conflicts of interest concerned mayors, deputy mayors, local councillors).

There is a consensus among stakeholders that controls regarding conflicts of interest are less time consuming and require less materials of evidence than controls of assets. There is no doubt that controls that follow the notifications received from citizens are an important aspect of NIA's activity and it also leads to stronger enforcement activity in the areas that are more exposed to the public eye. However, the exposed areas may not necessarily cover all the sectors and types of activity of the public sector where conflicts of interest may represent a great threat to the use of public resources.

There is no evidence of proactive monitoring of compliance with the duties to declare and resolve real conflicts of interest. Provided NIA had adequate capacity, this would be a possible direction for further preventive work. Practically, this activity could be organized in several ways. One option would be to complement the controls of randomly selected public officials that currently focus on declarations of assets and personal interests with a component of screening compliance with the legal regime of conflicts of interest, including the review of a selection of decision-making processes where the public official participated. Another option would be to keep the control procedures separated and strengthen the proactiveness of the current control procedure of conflict of interests.

Recommendation 45: Consider introducing ex officio controls of conflicts of interest in certain areas based on identified high corruption risks and/or random selection.

3.7.3 Contents of control

According to the Methodology, the object of control regarding conflicts of interests is the declaration of a real conflict of interest, resolution of a real conflict of interests, admission of a conflict of interests. The law does not limit the duration of the control procedure. The Methodology sets the time limit of 40 working days with a possibility of extension.

According to Article 37, Paragraph 2 of the Law No. 132, several provisions that govern controls of assets and personal interests apply also to controls of compliance with the legal regime of conflicts of interest, incompatibilities and restrictions.

In the process of control of non-declaration of real conflicts of interest or non-resolution of such conflicts of interest, an integrity inspector must request the public organization in which the subject of declaration works or, as the case may be, the responsible employee to present several categories of documents. The documents provide information on actions made by public agents and heads of public organizations as to the declaration and resolution of conflicts of interest or failure to undertake such actions.

The parts of the Methodology available for this assessment do not provide details regarding the manner of identifying and assessing personal interests, especially based on information from private sources. The Methodology defines different kinds of interest: personal interest, non-material personal interest, personal interest resulting from activities as a private person, personal interest resulting from relations with legal persons, and personal interest resulting from relations or affiliations with non-profit organizations. The algorithm of checking the presence of such interests is not very clear. Especially the category of non-material personal interest[12] could be subject to a variety of equivocal interpretations.

Recommendation 46: Unless done in the parts of the Methodology not available for this assessment, develop a step-by-step internal guide for screening of private interests of persons subject to control. Note that in certain cases, the review of private interests for the purpose of verifying conflicts of interest may involve complex inquiries into formal and beneficial ownership of business entities as well as networks of personal and business relationships amongst individuals and legal entities.

3.7.4 Other specific issues regarding the framework on conflicts of interest

According to Article 4, Paragraph 1 of the Law No. 133, declarations of assets and personal interests contain data on the public official, his/her family members and cohabitants. The declarations are the principal tool for disclosing personal interests. However, they do not provide data on close persons in the understanding of Article 2 of the Law No. 133. Close persons are sources of personal interests that may give rise to conflicts of interest. Control of conflicts of interest should include an element of verification whether personal interests resulting from relations with close persons have influenced or may influence the impartial and objective fulfilment of the responsibilities of a public official.

Recommendation 47: Supplement the declaration form with a field requiring the subject of declaration to list close persons who are not family members or cohabitants. This information does not have to be disclosed to the public.

[12] Defined by the Methodology as "interest based on moral and spiritual principles, related to the field of science, culture, art, communication, social, political, religious activities (the possibility of career advancement, application to certain trainings and professional developments, obtaining more favourable working conditions, the possibility of improving the reputation, maintaining an honorary position; hostile attitude towards someone); interest generated by certain rights or obligations (insurance contract, lease, donation, will, bank loan, patent, copyright, trademark, license, etc.)".

Sometimes acquisition of property may invoke real or apparent personal interests associated with persons from whom the property was acquired. The current declaration form requires providing several kinds of details regarding acquisition, e.g. manner and year of acquisition but not the counterparty of the transaction.

Recommendation 48: Supplement the declaration form with fields requiring the subject of declaration to provide the following data relevant for monitoring conflicts of interest: name/title of the natural person/legal entity from which property, securities, shares, equity, were obtained if acquired in the period covered by the declaration. This information does not necessarily have to be disclosed to the public.

Some stakeholders alleged that, in practice, NIA did not settle several potential conflicts of interests when local-level officials requested NIA's support in identifying solutions. However, at a later stage, NIA allegedly initiated controls regarding those specific cases, found violations of the conflicts of interest regime and sanctioned the officials. The team of experts cannot independently verify such claims and the details of the cases are not available for the analysis. If this proves to be a continuous problem, a legal amendment could be considered to provide a defence for public officials listed in Article 12, Paragraph 7 of the Law No. 133 if they have duly informed NIA about a real conflict of interest and NIA has not settled it. This is especially relevant in situations where conflicts of interest cannot be avoided by merely abstaining from performing an official act, for example, because making the act is mandatory and within the exclusive competence of the public official.

Recommendation 49: Consider providing an explicit defence for public officials if they have duly informed NIA about a real conflict of interest as required by the law and NIA has not settled the conflict of interest by offering a viable solution.

3.8 Incompatibilities

3.8.1 Competence of NIA

Regarding the control of incompatibilities, NIA is mandated to check the compliance with, find and sanction, breaches of the legal regime of incompatibilities (Article 6, Items b) and c) of the Law No. 132). Heads of public entities must provide notifications to NIA about public agents from the entities they lead, who did not solve incompatibility situations within the deadline of one month since the start of their mandate, labour or duty relations (Article 12, Paragraph 3, Item d) of the Law No. 82).

3.8.2 Control activity

In 2020, 114 of 400 protocols on the initiation of control concerned incompatibilities. The number of the ascertaining documents of breaches in the area of incompatibilities has been growing in 2018-2020 (respectively 9, 23, and 81). Of all ascertaining acts on breaches issued by NIA, the second largest share (81 of 210 in 2020) concern incompatibilities. 43 of 81 acts on breaches related to incompatibilities concerned mayors, deputy mayors, local councillors. The review of the available documents and the information acquired during the scoping meetings did not reveal any deficiencies in the performance of NIA regarding controls of incompatibilities. Note that the experts did not evaluate the legal framework of incompatibilities *per se*.

3.9 Restrictions and limitations

3.9.1 Competence of NIA

Regarding control of restrictions, NIA is mandated to check compliance with, find and sanction breaches of the legal system of restrictions and limitation (Article 6, Items b) and c) of the Law No. 132).

3.9.2 Control activity

In 2020, 5 of 400 protocols on the initiation of control concerned restrictions and limitations. The number of the ascertaining documents on breaches in the area of restrictions and limitations has been small but slightly growing in 2018-2020 (respectively 2, 1, and 5).[13]

According to the Methodology, the object of control are the restrictions and limitations provided in Articles 18–21 of the Law No. 133 (restrictions related to the termination of employment or service, restrictions in case of concluding commercial contracts, the limitation of representation, the limitation of advertising) and other restrictions provided by the law (restrictions in the civil service hierarchy, including those provided for in special laws).

3.9.3 Oversight tools regarding post-employment restrictions

According to Article 18, Paragraphs 2 and 3 of the Law No. 133, subjects of declaration may not obtain benefits which are not provided for by the law or by the individual labour agreement on account of the function they held previously, including on account of business information they obtained in the exercise of that function. Subjects of declaration who terminated their mandate, employment or service agreements, and who, during the last year of work or service, had direct supervisory responsibilities or control of commercial or non-commercial organisations, shall have no right to be employed, for a period of one year, by such organisations. There is also a restriction for companies in which former subjects of declaration or persons close to them have shares or work as part of the management or oversight structures, for a year, to conclude any commercial agreements with the authority where they worked (Article 19, Paragraph 1) as well as a restriction for former public agents on representation vis-à-vis public organisation where they worked or on issues regarding the professional duties they previously carried out (Article 20).

The law does not provide NIA with adequate oversight tools regarding these restrictions. After the termination of their public functions, public officials do not have an obligation to provide NIA with information about benefits that they receive, employment with commercial or non-commercial organisations, or shares in companies. During or after the termination of the public function, information is not declared on companies where persons close to the public official (other than family members and cohabitants) have shares or work as part of the management or oversight structures. Hence it appears practically impossible for NIA to carry out proactive verifications.

In the international practice, there are many examples to draw upon in developing an oversight system regarding compliance with post-employment rules. For example, in France a civil servant, who ceases permanently or temporarily his/her functions, refers to the hierarchical authority to which she/he reports in order to assess the compatibility of any gainful activity, salaried or not, in a private company or a body governed by private law or any liberal activity with the functions exercised during the three years preceding the start of this activity. When the hierarchical authority has serious doubts about the compatibility of the planned activity with the functions performed by the civil servant, it consults, prior to its decision, with the ethics referent. When the latter's opinion does not allow this doubt to be removed or when the hierarchical level or the nature of the functions of the civil servant justify it, the hierarchical authority refers to the High Authority for Transparency in Public Life.[14]

Recommendation 50: Consider creating a mechanism that would allow NIA to carry out monitoring of compliance with post-employment restrictions. Some of the possible elements of such mechanism could be:

i. Complementing the declaration submitted after the termination of the public function with full information on companies in which persons close

[13] Only one of these ascertaining documents of breaches concerned limitations (in 2020).
[14] French Law on the Rights and Obligations of Functionaries, Article 25 octies, Paragraph 3 [*Loi n° 83-634 du 13 juillet 1983 portant droits et obligations des fonctionnaires*] available at legifrance.gouv.fr, accessed on 18 March 2021.

to the subject of declaration have shares or work as part of the management or oversight structures;

ii. Submitting to NIA ad hoc notifications about undertaken employment and other professional engagements;

iii. Submitting a declaration one year from the termination of the public function with data on employment and other professional engagements, income and other benefits received as well as agreed upon based on contracts in the one-year period, companies in which the subject of declaration and persons close to him/her have shares or work as part of the management or oversight structures.

A number of other European countries envisage longer cooling-off periods of three to five years. In the context of this international experience, the extension of the time period could also be considered for the Republic of Moldova.

3.10 Sanctioning system

NIA has available the following sanctioning possibilities:

- NIA can submit to the court requests for the ruling on the absolute nullity of the administrative act issued/adopted or of the legal act concluded directly or through a third person, or of the decision taken in breach of the legal regime of conflicts of interest, established by a final ascertaining act;
- NIA can submit a request to the court as soon as the conflict of interest has been found with a view to applying, as an insurance measure, the suspension, during the trial, of the administrative act issued/adopted or of the legal act concluded directly or through a third person, or of the decision taken;
- NIA finds and examines contravention cases concerning violations of the legal regime of conflicts of interest, incompatibilities, restrictions and limitations, given within its competence, and, where appropriate, applies sanctions under the Contravention Code of the Republic of Moldova.

According to the Article 423^3 of the Contravention Code, the following possibilities are defined:

1) The contraventions referred to in Articles 319^1 (Obstruction of the activity of the National Integrity Authority) and 330^2 (Violation of the rules for declaring assets and personal interests) shall be examined by the National Integrity Authority, taking into account the provisions of Article 423^9 (Integrity Council) par. (1).

2) The integrity inspectors of the National Integrity Authority shall have the right to examine the contravention cases referred to in par. (1) and to apply sanctions.

3) The contraventions referred to in Article 313^2 (Failure to declare or resolve a conflict of interests), 313^4-313^6 (Violation of the legal regime of incompatibilities and limitations applicable to public office or function of public dignity; Failure to take measures regarding the execution of the provisions of the Law on the declaration of assets and personal interests and Violation of the legal regime of restrictions and limitations in connection with the termination of the mandate, of the labor relations or service and migration to the private sector of public officials (pantouflage/revolving doors) shall be found by the National Integrity Authority.

4) The integrity inspectors of the National Integrity Authority shall have the right to ascertain the contraventions referred to in par. (3) and to conclude minutes.

5) The minutes relating to the contraventions referred to in par. (3) shall be submitted to the competent court for examination in substance.

In the activity reports of NIA for 2019 and 2020 only the following sanctions are mentioned:

in 2019:

133 **Contravention cases initiated**	**100 – protocols drawn up (~75%)**
	9 – contravention cases ceased (~7%)
	174 250 lei - Fines imposed (~8 960 EUR)
	26 contravention cases sent in the court instances
	9 contravention cases ceased
	3 contravention cases challenged
	24 – pending contravention cases

- 3 actions in court regarding the nullity of documents issued in a situation of conflict of interest and
- 1 case – on the non-execution of the NIA ascertaining document, with reference to the nullity of the contracts.

in 2020:

241 Contravention cases initiated	**199** – contravention protocols drawn up
	25 ceased contravention cases
	17 contravention cases sent to court
	26 challenged contravention cases
	456500 lei - fines applied
	38 cases under management

- 10 cases pending before the courts regards nullity of documents issued in situations of conflict of interest.

From the above-mentioned information, the only thing which could be pointed out is that dismissal from function is disproportionately harsh in certain situations. Some incompatibilities or conflicts of interest are really small matters, for which a certain fine would be considered sufficient.

> ***Recommendation 51:*** **Legislative amendments should be considered to ensure a more proportionate sanctioning system for violating the legal regime of conflicts of interest and incompatibilities.**

3.11 Other prevention issues

NIA is also mandated to cooperate with national and international institutions in view of promoting integrity in the public sector. This cooperation includes, for example, preparing, approving and distributing methodological guidelines; preparing studies, analyses, and statistics; delivering training; providing expert advice to public organizations and to the subjects of declaration; issuing certificates of integrity, etc.

Of these, the issuance of the integrity certificates appears of limited added value. The certificates are requested for/by persons intending to apply for employment in eligible public functions. According to Article 31^1, Paragraph 2 of the Law No. 82, the certificates include information regarding the persons as to the established unjustified assets, conflicts of interest, violations of restrictions, unsolved incompatibilities, violation of limitations as well as the prohibitions to hold public office or a position of public dignity, deriving from the statements of NIA or from final court decisions. This information derives exclusively from formal records and does not provide anything about the integrity of the person beyond the record of violations. According to anecdotal evidence heard by the team of experts during the scoping meetings, there have been cases where recipients of the integrity certificates used them in public communication as a confirmation of their integrity.

> ***Recommendation 52: Consider replacing integrity certificates with a simple request of data from the record of violations to be submitted to NIA by the recruiting public entity and to be answered by NIA in the form a simple notification or excerpt.***

Many aspects of the control activity of NIA would benefit from a strengthened risk-based approach. According to Article 27, Paragraph 2 of the Law No. 82, heads of public entities are responsible for ensuring the management of corruption risks. Paragraph 3 envisages a special register for documenting corruption risk management. The risk registers, on the one hand could be useful sources of information for directing control activities of NIA. On the other hand, NIA could play a role in monitoring the risk management and support raising the quality of this activity.

A foreign example to be considered is Montenegro where the Agency for Prevention of Corruption has developed an online application, which contains, amongst other things, a register of corruption risks of all public bodies. The Agency can use the application for various kinds of analysis and monitoring of risk trends in selected bodies or sectors, or in the public sector as a whole.

Recommendation 53: In the long run, consider developing a system for monitoring and analysing corruption risk registers and for using them as one of the sources of information to direct control activities of NIA.

3.12 Legislative issues

Moldovan interlocutors mentioned that the last legislative initiative which proposed amendments to the Law No. 132 was developed on the initiative of several MPs and respectively the Government failed to come up with an opinion on the proposed amendments. The opinion of the Ministry of Justice (MoJ) was requested but it did not manage to present its position (the Parliament offered very little time). Respectively, the Parliament adopted the legislative amendments in question without the opinion of the Government or of the MoJ. The MoJ also explained that the legislative initiative was registered on 4 December 2020 in the Parliament and voted on 16 December 2020 (in both readings). The MoJ received the letter and the proposed legislative amendments on 8 December 2020. The MoJ had 10 days available for the examination of the legislative initiative and present its opinion to the Government. On 16 December 2020 the amendments were already voted by the Parliament, however the Constitutional Court has suspended them.

Recommendation 54: NIA should be consulted and included in all discussion regarding legislative amendments affecting NIA's mandate and competences.

4 CONCLUSIONS AND FOLLOW-UP

This Technical Paper is based on a desk review of relevant legal acts of the Republic of Moldova, reports and action plans as well as on several consultations (scoping meetings) with key stakeholders. The analysis represents an interpretation of the legal framework and conditions of work of NIA considering the insights provided by the stakeholders. The external and internal framework of NIA is complex, and especially the internal documents provided for this assessment represent only a limited part of NIA's whole documentation. Notably, parts of the Methodology for controls, which is crucial for this assessment, were not available due to confidentiality considerations.

NIA is one of the cornerstones of anticorruption efforts in the Republic of Moldova. However, the institution still has not reached its full strength and extensive efforts are needed to realize its full potential. As a matter of priority, the Republic of Moldova needs to eliminate inefficiencies in the management structure of NIA, ensure adequate capacity and protect independence of NIA, develop and implement appropriate tools for guaranteeing the legality, high quality and consistency of the acts issued by the integrity inspectors and develop the ability of NIA to effectively check unexplained wealth of public officials.

A summary of the draft amendments of the laws No. 132 and No. 133 being prepared by the working group of the Presidency of the Republic of Moldova was provided to the experts. The draft laws are still in the process of development, but this initiative represents an ample opportunity to implement several recommendations proposed in this technical paper. Certain past legislative attempts to change NIA's framework proceeded without adequate consultations with NIA and all other relevant stakeholders. **An inclusive legislative process appears a key precondition for the positive impact of future reforms.**

5 RECOMMENDATIONS

This paper proposes 54 recommendations for the further development of NIA and improvement of its performance. The experts consider fourteen recommendations (5, 7, 9, 10, 16, 18, 19, 29, 30, 31, 33, 39, 40, 50 highlighted in bold) to be of major importance.

The general framework (independence, accountability) and management of NIA

1. Consider introducing a guarantee of a certain level of budget funding of NIA in the Law No. 132.
2. Annual reports of NIA should be more informative and more of practical nature (with practical cases and examples). Reports should be also comparable amongst them (statistical data and other content) so that the society could see more clearly changes and/ or progress made.
3. NIA and IC should reach an agreement regarding NIA's institutional strategy, which should contain, amongst other things, NIA's strategic objectives with indicators of outcomes and impact. Such indicators could be, for example, the share of civil servants well aware of rules of the legal regime of conflicts of interest, incompatibilities, restrictions and limitations; the share of proceedings of asset controls, which ended with full verification of the initial suspicion (i.e. were not terminated due to lack of access to data); the share of requests of confiscation, which resulted in actual confiscation of assets.
4. NIA should prepare the proposal of the institution's headcount and its organizational structure based on an explicit provision of the law, and thus this prerogative would not be formally left only to the Parliament.
5. **Consider having a management "board" consisting of three persons, which would be a collegial body in the decision-making process. Such solution is present in many countries in the European Union and worldwide (Armenia (5 members), Croatia (5 members), Slovenia (3 members)). Alternatively consider having a hierarchical structure where the President chooses the Vice-president.**

The Integrity Inspectorate

6. A firm and proper hierarchical level should be implemented for the integrity inspectors in order to verify the finding acts issued by the inspectors and also to ensure uniform practices and application of legal provisions by the inspectors.
7. **Inspectors would need an efficient and proper supervisor – a head of division to supervise the quality of ascertaining acts before they are adopted and issued, the correctness of the application of the control methodologies and to systematize the implementation of different legislative provisions. Moreover, NIA could apply performance indicators for the activity of the integrity inspectors, which assign greater weight to ascertaining the quality of their acts. To avoid disputes as to the legality of these mechanisms, consider determining the main principles and elements of the internal control and the co-ordination mechanism for acts prepared by integrity inspectors in the Law No. 132.**
8. NIA could organize the Integrity Inspectorate in a way to divide different areas of activity to different inspectors: 3 or 4 specialized control divisions (on assets declaration, conflicts of interest, incompatibilities, restrictions and limitations, considering that different procedures are applied in these cases as well as the timeframes for examining these violations are also different.
9. **Consider excluding, from the selection process, the polygraph testing of candidates for the positions of integrity inspectors. The law or internal regulation should also provide a clear and transparent process (simpler selection procedure) for selecting the integrity inspectors.**
10. **Due to the fact that there is lack of candidates for positions of integrity inspectors and taking into consideration the opinions mentioned during the scoping meetings regarding the "special status" of the inspectors, consider amending legislative acts by**

providing appropriate salary incentives, social guarantees, possible right to travel free of charge in public transportation, right to housing, etc. for integrity inspectors.

11. Consider amending the law so that activities of monitoring, control and organization of the activity of the inspectors are carried out by the Head of the Integrity Inspectorate. However, such control shall not constitute inappropriate interference with the work of the integrity inspector within his/her decision-making, but take form of non-obligatory instructions, recommendations, guidance with the aim to ensure quality, objectivity and uniformity of decisions.
12. Consider amending the legal framework to provide more in terms of improving the standards of the activity/procedure of the integrity inspectors (defining principles and rules of procedure of the integrity inspectors).

Co-operation of NIA with national and international counterparts

13. The Law No. 132 should be amended with the provision that any kind of notification that contains substantially relevant should be accepted by NIA, no matter if it is anonymous or does not provide information according to the Law No190-XIII of 19 July 1994 and or Administrative Code.
14. NIA and other institutions should further continue to develop and sign MoUs to enhance cooperation and exchange of data.
15. Law No. 132 should be amended in a way that institutions, to which NIA submits requests of information or investigation requests, are obliged to inform NIA about their findings and conclusions.
16. **Republic of Moldova should consider signing the Treaty on Exchange of Data for the Verification of Asset Declarations and co-operation possibilities under the UNCAC. In principle Republic of Moldova could also attempt concluding relevant bilateral treaties with foreign countries but the feasibility of this requires further assessment, especially because it also depends on the will of the foreign countries to cooperate.**

The Integrity Council

17. NIA and IC should enhance their cooperation and discuss closely on their future work and collaboration.
18. **Consider the role and existence of IC whether it is needed or not, since currently this mechanism is not productive and hampers efficiency of both NIA and IC.**
19. **In case IC is maintained, consider providing it with a permanent secretariat to assist it in its work, prepare documentation and represent a strong communication channel with NIA. Consider granting to the IC full access to databases and other documents as needed. Such access should be granted on case-by-case basis and not in general terms (considering that giving full access is not proportionate to their obligations and rights).**

Training of NIA's staff

20. NIA should consider introducing mentorship for newly appointed inspectors, so that the post-recruitment process and introduction into working procedures is smooth and effective.
21. NIA should put more emphasis on ensuring uniform practices of the integrity inspectors.

Electronic tools

22. NIA should continue efforts towards developing the electronic mechanism for automatic verifications.
23. Consider developing and integrating tools of statistical analysis (statistical outliers, relations between different categories of data, associations between the declared data and outcomes of proceedings, etc.) in the e-Integrity system and use them, along with other methods, for selecting declarations for verification.
24. The current stage of development and capacity of NIA might not allow creating new complex electronic tools but, in the long term, consider introducing relevant legal amendments and

supplementing the functionality of the E-Integrity system with a component for semi-automatic monitoring of conflicts of interest.

Controls – general matters

25. NIA should monitor the distribution of the workload among the integrity inspectors and check whether any imbalances in this regard create bottlenecks in the activity of the integrity inspectors and general inefficiencies in the use of the human resources.
26. The depersonalized notification as such should be exempt from the documents that the person subject to control has the right to become familiar with. Only relevant facts from the notification should be provided as necessary for the proceedings, thus reducing the risk that information not directly relevant reveals the author of the notification.
27. Abolish the right of the person subject to control to be informed of the initiation of inspection and substitute it with a notification for the person to be able to exercise his/her rights to be heard before the finalisation of the ascertaining act.
28. Define 3 years of statute of limitation for investigating conflicts of interest, incompatibilities and limitations.

Control of declarations of assets and personal interests

29. Develop and constantly update the automated verification capabilities with the aim of reaching the ability to verify at least 10-20% of declarations per year.
30. In order to better direct the efforts towards officials who have more likely committed violations, in the long term, the selection of declarations should be based more on a systematic risk assessment. Among risk criteria could be above average informal indicators of corruption (including media reports and research) and formal indicators of corruption (detected corruption offences, complaints taking place in particular institutions or acts committed by a particular category of officials).
31. Complement the scope of the inspections of declarations as per Article 27 of the Law No. 132 with the element of *prima facie* assessment of the economic plausibility of the declarations and adjust the Methodology accordingly, as necessary.

Control of assets and personal interests

32. Considering the major importance of confiscations, NIA should collect, systematize and publish comprehensive statistics on this aspect.
33. Stipulate an explicit obligation to verify assets in case when a *prima facie* economically implausible declaration is detected. Moreover, to avoid the risk that formal controls of declarations of assets and personal interests as well as limited prior checks systematically leave certain officials with dubiously acquired assets undetected, consider choosing a certain number of public officials for full asset control based on random selection.
34. Unless already done in the parts of the Methodology not available for this assessment, define clearly the steps to be made within prior checks. It is strongly recommended to increase the time limit of prior checks. In the elaboration of such amendment, consult the management of NIA and the Integrity Inspectorate to determine an adequate time limit sufficient for grounded dismissal of suspicions or for the establishment of reasonable suspicions in most cases.
35. Revise the definition of "substantial difference" and express it in the following principal terms: a difference that exceeds 20 average national monthly salaries between assets and savings of the declarant at the start of period when he/she became subject of declaration and income during the period under review, including income of members of the family and cohabiting spouse, on the one hand, compared to assets and savings at the end of the period under review including expenses during the inspection period, on the other hand.
36. Unless a standard formula/ equation for calculating the substantial difference already exists, it must be developed and approved.

37. Clearly determine in the Methodology that unjustified property shall be expressed primarily as value, which in concrete cases may or may not be linked to concrete goods.
38. To reduce the administrative burden, consider changing the procedure of requiring physical paper excerpts from public databases only when the declaration subjects challenge the particular piece of information and claim that it is wrongly represented.
39. **In addition to the currently proposed extension of the competence of NIA to carry out verifications concerning persons with whom subjects of declaration have had transactions, develop a swift inquiry mechanism between NIA and tax authorities as to whether the latter possess data that can explain expenses above certain amounts of particular third persons.**
40. **Explore legal ways to oblige declarants to justify unusually low transaction value of acquisition compared to reference market value determined by NIA. The same obligation could be applied regarding unusually high transaction values in situations when subjects of declaration have alienated assets.**
41. Implement the recommendations and solutions previously proposed to the Republic of Moldova for facilitating possibilities for NIA to obtain independent expert evaluations of assets.
42. Unless already done in the parts of the Methodology not available for this assessment, NIA should develop and apply internal guidance as to what kind of expertise performed by the person subject to control and what confirmatory information provided by third persons are considered reliable.
43. Unless already done so, NIA should add an annual subsistence minimum or a similar value such as the household expenditure per capita based on national statistics of Moldova to the outgoing cash flow of each subject of declaration and related persons (separately or jointly as a household) subject to control of assets.
44. Ensure that all declared data reflect the income and asset situation in uniform and unequivocal periods of time.

Conflicts of interest

45. Consider introducing *ex officio* controls of conflicts of interest in certain areas based on identified high corruption risks and/or random selection.
46. Unless done in the parts of the Methodology not available for this assessment, develop a step-by-step internal guide for screening of private interests of persons subject to control. Note that in certain cases, the review of private interests for the purpose of verifying conflicts of interest may involve complex inquiries into formal and beneficial ownership of business entities as well as networks of personal and business relationships amongst individuals and legal entities.
47. Supplement the declaration form with a field requiring the subject of declaration to list close persons who are not family members or cohabitants. This information does not have to be disclosed publicly.
48. Supplement the declaration form with fields requiring the subject of declaration to provide the following data relevant for monitoring conflicts of interest: name/title of the natural person/legal entity from which property, securities, shares, equity, were obtained if acquired in the period covered by the declaration. This information does not necessarily have to be disclosed to the public.
49. Consider providing an explicit defence for public officials if they have duly informed NIA about a real conflict of interest as required by the law and NIA has not settled the conflict of interest by offering a viable solution.

Restrictions and limitations

50. **Create a mechanism that would allow NIA to carry out monitoring of compliance with post-employment restrictions. Some of the possible elements of such mechanism could be the following:**

- **Complimenting the declaration submitted after the termination of the public function with full information on companies in which persons close to the subject of declaration have shares or work as part of the management or oversight structures;**
- **Submitting to NIA ad hoc notifications about undertaken employment and other professional engagements;**
- **Submitting a declaration after passing of one year since the termination of the public function with data on employment and other professional engagements, income and other benefits received as well as agreed upon based on contracts in the one-year period, companies in which the subject of declaration and persons close to him/her have shares or work as part of the management or oversight structures.**

51. Legislative amendments should be considered to ensure a more proportionate sanctioning system for violating the legal regime of conflicts of interest and incompatibilities.

Other prevention issues

52. Consider replacing the integrity certificates with a simple request of data from the record of violations to be submitted to NIA by the recruiting public entity and to be answered by NIA in the form a simple notification or excerpt.
53. In the long run, consider developing a system for monitoring and analysing corruption risk registers and for using them as one of the sources of information to direct control activities of NIA.

Legislative issues

54. NIA should be consulted and included in all discussion regarding legislative amendments affecting NIA's mandate and competences.