

**To the Parliament of the Republic of Moldova  
To the Government of the Republic of Moldova  
To the President of the Republic Moldova  
To the Supreme Council of Magistracy  
To the Supreme Council of Prosecution  
To the National Integrity Authority  
To the Broadcasting Coordinating Council  
To the Central Electoral Committee  
To the National Anticorruption Centre  
To the EU Delegation in the Republic of Moldova  
To the diplomatic missions accredited in the Republic of Moldova**

## **PUBLIC APPEAL<sup>1</sup>**

### **The Strategic Priorities of the Civil Society in the Anticorruption Area Proposals for the new National Anticorruption Strategy**

#### **RATIONALE**

1. Corruption represents a major problem in the Republic of Moldova affecting the public institutions at all levels. According to the most recent public opinion surveys, the systemic corruption represents by far the biggest problem that the Republic of Moldova is currently facing, representing a major impediment for the sustainable transformation, economic development and the rule of law consolidation. Combating the high-level corruption, depoliticising of the law enforcement agencies and increasing the efficiency of an independent judicial system represent the primary concerns of the civil society and of the development partners.
2. The justice sector and the anticorruption sector from the Republic of Moldova are currently undergoing a continuous reform process facing, however, a low level of trust on behalf of the citizens. The main reference national policy papers in these sectors are the Justice Sector Reform Strategy (2011-2016), which includes a series of anticorruption-related actions, and the National Anticorruption Strategy (2011-2015), extended for the year 2016. The RM authorities must provide a comprehensive evaluation of the results of these two strategies' implementation till the end of this year.
3. Regarding the JSRS, according to the preliminary data provided by the Ministry of Justice, around 82% of all the actions were reported as having been accomplished. However, it is worth mentioning that the respective evaluation does not also refer to the impact of the actions performed. Taking into consideration the imperative need to ensure the practical enforcement of a considerable number of actions from the JSRS, and also considering the remaining backlog, it is recommended to extend the deadline for the JSRS implementation

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<sup>1</sup> This document was developed in the framework of the projec "Strengthening of Civil Society in the Fight against Corruption

in order to arrange for a due quality of its implementation, accompanied by the development of a detailed mechanism for the evaluation of the effective implementation of the actions already adopted in the framework of the reform. As for the NAS, the National Anticorruption Centre (NAC) is currently in the process of developing a new strategy for the years 2017-2019.

4. The EU-Moldova Association Agreement, Titles II and III, sets a series of commitments for the Republic of Moldova in the mentioned areas. In this respect, after assessing the progress in the accomplishment of the National Action Plan on the implementation of the Association Agreement (2015-2016), as well as of the Roadmap on the priority reforms' agenda, the findings are that up till now a series of legislative actions were implemented regarding the justice sector reform (i.e. reorganization of the judicial courts and optimization of the number of judges) and the anticorruption system (promotion of a package of laws on integrity<sup>2</sup>, prosecution bodies' reform by adopting a new Law on prosecution and of the Law on specialized prosecution offices; promotion of amendments to the Law on verification of professional integrity, a new Law on integrity being currently in the process of adoption, which will replace the current Law on prevention and combating of corruption).
5. Regardless of the positive evolutions in the justice sector reform and in the anticorruption area, their practical enforcement still remains a challenge for the authorities from the Republic of Moldova. There is a low level of citizens' trust in justice and in the law enforcement institutions. In this respect, a change of paradigm of the citizens' view regarding the efficiency of the justice sector reform and of the anticorruption efforts must represent the authorities' main concern.
6. At the same time, analysing the latest evolutions in the justice sector and in the anticorruption area, the main concerns of the civil society and of the development partners lie with the lack of transparency in the examination by the judicial courts of corruption cases related to the banking system frauds, which trigger a high level of interest from the public. In this context, we recall about the recent disapproving manner of appointing the Prosecutor General that was non-transparent and which is further undermining the credibility of the institution of General Prosecutor's Office<sup>3</sup>.
7. In a rule-of-law state, the civil society and the mass-media have a special role in providing for transparency of public proceedings, in increasing the accountability of public institutions and in emphasizing the integrity issues of the public agencies. In the Republic of Moldova, there is a permanent monitoring of the reform process in the justice sector and anticorruption ensured by the civil society. This includes the institutionalized monitoring through the Anticorruption Alliance, and other forms of manifesting such as participation in the public policies' development process and formulation of common views through public appeals in the cases when deviations or abuse are detected on behalf of the authorities.

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<sup>2</sup> Law on National Integrity Authority (NIA), Law on the declaration of assets and of private interests, as well as Law on the modification of the legal framework related to the mentioned legal acts.

<sup>3</sup> NGO Statement disapproving the way of appointment of the Prosecutor General, 8.12.2016: <http://crjm.org/wp-content/uploads/2016/12/2016-12-09-Declaratie-numire-Procurorul-General-fin.pdf>

8. The issue also lies with the fact that problems are identified in the process of increasing the decision-making transparency regarding policy papers or draft laws proposals. It frequently proves that the public consultation is only formal, or is lacking in general. Often, the recommendations issued by the civil society not being taken into consideration or, if they are still accepted and promoted, the latter are denaturalised in the process of final adoption of the respective acts. On the other hand, there are also positive examples when the civil society's appeals are reinforced through the statements and positions of the development partners. However, the majority of the civil society's public appeals either remain ignored or get only a formal response.
9. At the same time, the importance of mass-media in the framework of prevention and fighting against corruption should also be emphasized. The main instrument that has the potential of having an impact in this regard is the journalistic investigation, which emphasizes the integrity issues of public officials. However, the major issue that the investigative journalism in Moldova is currently facing lies with the cooperation in an optional regime on the side of certain competent authorities who frequently are reluctant to provide information of public interest, ignore or react with delays regarding the investigative articles envisaging different integrity issues of the civil servants or public officials.
10. The business environment is currently facing the issue of utmost red-tape in their activity, including through the excessive application of revision and control instruments, which also is propitious ground for corruption in this area. Regardless of the fact that the legal framework was completed with a special law regulating the controls performed by public institutions, in reality these norms still provide opportunities for abuse on behalf of the control bodies. This state of affairs primarily affects the small and medium enterprises, which lack enough human resources to face the multitude of verifications on behalf of control bodies. Besides, the business environment faces the issue of lack of clarity in the process of authorizations' issuance by the local public authorities, of public services' inefficiency, as well as their susceptibility to acts of corruption. Corruption is also a major impediment in business development and in the valorification of export opportunities, especially towards the EU market through the DCFTA related to the Association Agreement. Another corruption-related issue is lack of transparency of the effective beneficiaries, which significantly limits the guarantees of business relations' stability between partners and allows for abuses, including through take-over of enterprises due to fictitious debts.
11. The importance of the education area in the context of preventing and fighting against corruption is hard to be underestimated: on the one hand, the sustainability of anti-corruption efforts depends on education, on the other hand – the education system as such is a hotspot of corruption. Even though a series of positive trends were noticed in the education area recently, such as the ones related to the baccalaureate exam, the changed principle of educational institutions financing, the new Education Code, a series of endemic issues still persist, which make the education system an area affected by corruption: (1) teachers' salaries and benefits are very small, which may not incentivize growth of professionalism; (2) the development of parents' associations as a support system for the

education sector does not go hand in hand with the growth of transparency in the educational institutions and neither is it related to the introduction of advanced methods of joint management; (3) the educational institutions become too profit-oriented in their struggle to survive, thus neglecting their primary function – ensuring the due quality of the educational process and due level of staff professionalism; (4) there exists a National Authority for Quality Assurance in Professional Education (ANACIP)<sup>4</sup> that aims at ensuring quality of higher education but it is not funded enough so that to be capable of duly accomplishing its mission; (5) the role of pupil/student in the decision-making process at the institutional level is undermined; (6) there is a lack of transparency regarding the use of funds from the state budget.

**CONSIDERING** *the* rationale mentioned above;

**PROCEEDING FROM** the understanding that the civil society has a determinant role in influencing the anticorruption processes;

**BEING AWARE OF** the need for a consolidated effort on behalf of the civil society and other non-governmental stakeholders in the formulation and promotion of priority actions in the anticorruption area;

**BEARING IN MIND**, that by the end of 2016, the Parliament of the Republic of Moldova is supposed to adopt the new National Anticorruption Strategy;

**WE MAKE AN APPEAL** to the competent national public authorities and to the international development partners to support the accomplishment of the following specific legislative and administrative key-actions, as provided for in the 6 Strategic Priorities for the Anticorruption area, developed, supported and promoted by the civil society organizations signatory hereto, and namely:

**Priority 1: Fighting against high-level corruption**

1. Ensuring the independence and efficient activity of the Anticorruption Prosecution Office in combating the high-level corruption, especially through the adoption of an adequate operational budget and through the revision, in consultation with the civil society, of the mechanism of anticorruption prosecutors' appointment and promotion, which should be transparent and merit-based.
2. Modification of the Penal Procedure Code in order to exclude from the competence of the Anticorruption Prosecution Office petty corruption prosecution as well as other cases related to the performance of public powers.
3. Development and approval of the Rules of Procedure regarding the workload evaluation mechanism and the prosecutors' performance evaluation mechanism.
4. Revision of the organigram and of the staffing list in the Prosecution bodies' system based on the new mechanisms of prosecutors' workload and performance evaluation.
5. Conclusion of an agreement between the Supreme Council of Prosecution and the civil society representatives regarding transparency of decision-making by the SCP and the

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<sup>4</sup> National Agency for Quality-Assurance in Professional Education, [www.anacip.md](http://www.anacip.md)

participation of the civil society representatives (with a consultative voting right) in the SCP decision-making process.

6. Implement without delay the package of laws on integrity by:
  - a. Ex-ante assesment of the laws on integrity as well as submitting proposals for respective amends to the existing legislation (ex. art.13 L. 132, art. 2 L 133);
  - b. Establishing without delay of the creation of the ANI Council ensuring full representation of civil society
  - c. Ensuring adequate funding for the ANI, allocating financial resources for 2017 (Note: ANI budget for 2017 is lower than for 2016 CNI)
  - d. Ensuring interoperability E-integrity system of public and private records.

### **Priority 2: Anticorruption actions in the judicial sector**

1. Revision of the mechanism of judges' appointment, promotion and career growth, which should be transparent and merit-based.
2. Evaluation of the judges' workload and performance and the adequate adjustment of the number of judges in the judicial courts.
3. Development in cooperation with the civil society experts of the amendments to the Law on the Supreme Council of Magistracy as for the transparency of decision-making regarding the promotion and career-growth of the judges.
4. Development in cooperation with the civil society of the amendments to the SCM Rules of Procedure regarding the procedure of publishing the judicial rulings issued in closed proceedings.
5. Ensuring publicity of judicial proceedings. Amendment of Art. 23 of the Civil Procedure Code in order to guarantee a fair procedure of declaring the proceedings as public or closed, including by providing the litigants with the right to forward an intercession for the proceedings to be declared as closed and by obliging the judges to issue a justification when taking a certain decision in this regard.

### **Priority 3: Fighting against political control (corruption at the political level)**

1. Modification of the Law on political parties through revision of financing conditions of the political parties from the state budget namely:
  - a. Provide a criteria i.e. including the results of presidential elections alongside parliamentary and local elections;
  - b. Establish proportionality with the membership fees and with the capacity of collecting donations from legal and natural persons;
  - c. Reduce the ceiling for donations by natural persons from 200 average monthly salaries per economy to 4 minimal salaries per economy and for legal persons from 400 average salaries in the economy to 40,
  - d. Restricting the right of donation from legal entities and their founders who received public contracts.
2. The introduction of political integrity records on political migration in the Parliament.
3. Depoliticising of public institutions of special public interest by adoption of a unique/harmonized mechanism for the selection and appointment of managers of institutions of special public interest, taking as a basis the Decision of the Constitutional Court No 29 of 21.12.2010 (using the example of selection and appointment of the NBM Governor);

4. Development and promotion of the modifications of the special legal framework regarding the activity of institutions of special public interest aiming at introducing the requirement for political non-attachment of the leaders of such institutions.
5. Amending the Electoral Code and the Law on political parties by introduction of mandatory periodic Audit extern of financial and other types of assets available to political parties (during the election campaigns, but not limited to these periods only). Establishing a civil society Observer Board to ensure permanent auditing of political parties.
6. Amending the Election Code, the law on political parties and Offences Code to introduce penalties for failure to submit financial reports and external audit reports, and for using prohibited funding sources, including origination from offshore jurisdictions.
7. Modification of the Law on the National Integrity Authority (NIA), of the Law on political parties in order to ensure the integrity control of persons with leading functions in political parties, as provided by the Law on declaring assets and private interests.
8. Amending the Art. 87 para. a) of the CEC Regulation on the financing of political parties in the Law on Political Parties, so that as of 2018, CEC will have the right to suspend the transfer of state subsidies in case of non-payment of membership fees by more than half of the members of the political party.

#### **Priority 4: Ensuring transparency**

1. Amendment of the legal provisions from the Broadcasting Code (the new Code) regarding the disclosure of the control structure and the final beneficiaries of mass-media institutions as well as their sources of financing (de-offshorization of mass-media).
2. Demonopolizing of the publicity services' market, namely through:
  - a. Amending the Broadcasting Code as for the approval of clear methods for selection of the company performing audience measurements as well as the criterias of evaluating the audience in the broadcasting area in order to provide an equally competitive environment;
  - b. Modification and completion of the Law No 1227–XIII of 27.06.1997 on publicity, for the introduction of new provisions regarding the conditions for contracting publicity services, requirements towards publicity agencies, sources of financing for the publicity services contracted from the broadcasters, and
  - c. Requesting an official survey by the Competition Council regarding the structure of the market of publicity services provided by the mass-media institutions in Moldova.
3. Modification and completion of the Law on access to information and of the Law on personal data protection in order to ensure access to public data without any additional costs, and to allow accomplishment of journalistic and transparency investigations with the use of public documents.
4. Revision of the current legislative framework regarding the self-referral obligation of the law-enforcement institutions and of the competent public authorities as a reaction to the results of journalistic investigations.
5. Amending the Regulations of public institutions on the application of the law on access to information, introducing clear provisions on the types of personal data that do not fall under the law on data protection.

### **Priority 5: Fighting against corruption in the private sector**

1. De-offshoring of the public and private environment in the Republic of Moldova, including of the public procurement system. Implementation of E-procurement.
2. Implementation of one-stop shops for the business environment.
3. Reduction and merger of planned controls of the business environment by the public authorities with control functions.
4. Adjustment of the amounts of fines in relation to the severity of offence.

### **Priority 6: Fighting against corruption in the education area**

1. Revision of accreditation rules and ensuring transparency in the process of accreditation of educational institutions (ex. Implementation of Poznan Declaration);
2. Clarification of the role and statute of the parents' associations in the process of collection and administration of extra budgetary funds in the framework of the educational institutions, exclusion of conflicts of interest;
3. Development and implementation of a complex system of performance evaluation (rating) of the educational institutions, based on qualitative criteria that estimate the impact of education on the future career of the graduates.
4. Monitoring of the activity of teaching staff who committed acts of corruption (Introduction and implementation of integrity records in the educational system);
5. Introduction of integrity and anticorruption classes in the university and schools' curricula;

**The detailed legislative and administrative action proposals in the anticorruption area are annexed to this Public Appeal, which was finalized in the framework of the Anticorruption Conference „Strategic priorities of the Civil Society in the Anticorruption Area” with the support of the Civil Society Organizations signatory hereto:**

1. *The Anticorruption Alliance*
2. *Association for Participatory Democracy - ADEPT*
3. *Association for Efficient and Responsible Governance - AGER*
4. *Promo-Lex Association*
5. *Regional Development Agency (RDA) - "Habitat"*
6. *Resource Center for Human Rights - CReDO*
7. *Students' National Anticorruption Center*
8. *Center "Pro-Marshall"*
9. *Legal Resource Center from Moldova - CRJM*
10. *Institute for Development and Social Initiatives - IDIS - Viitorul*
11. *Institute for European Policies and Reforms - IPRE*
12. *East Europe Foundation, Moldova*
13. *Soros Foundation – Moldova*
14. *Union of Organisations of Persons with Disabilities – UOI*
15. *... (The list is open for support)*

**Chisinau, 13<sup>th</sup> of December 2016**