

Monitoring the process of resetting the anti-corruption system in January-September 2017

For the reference period, in the anti-corruption field, there are several key issues to be tinted:

- the process of setting up the National Integrity Authority (NIA) by reorganizing the National Integrity Commission (NIC);
- approving the National Integrity and Anti-Corruption Strategy for 2017-2020 (NIAS);
- adoption of the Law on Integrity (Law No 82/2017);
- starting the process of the implementation of the Law no. 325 of 23.12.2013 on the assessment of institutional integrity (Law No 325/2013).

Setting up the National Integrity Authority (ANI) by reorganizing the National Integrity Commission

In January-September 2017, the process did not go too far. The reform is triggered by the lack of predictability, efficiency and timeliness of the Integrity Council (IC). Despite the art. 12 paragraph (7) lit. h) of Law no. 132 of 17.06.2016 on the National Integrity Authority (Law No. 132/2016), the IC did not approve the Regulation on its organization and functioning. The IC seems unpredictable, including in its' communicating with the stakeholders. The IC has not shown enough efficiency, many meetings being postponed due to lack of quorum. Likewise, in organizing the competition to fill the positions of the Chair and Vice-Chair of the NIA, the IC unduly prolongs the competition procedures.

Under Art. 44 par. (4) of the Law no. 132/2016, within 2 months of the date of its first meeting, the IC was to organize the contest for the appointment of the Chair and Vice-Chair of NIA. This term has not been met and the Regulation was adopted only on February 20, 2017¹, the Regulation having a questionable quality². The normative act, following the legal expertise carried out by the Ministry of Justice, is published in the Official Gazette of the Republic of Moldova only on April 7, 2017, when the announcement regarding the launching of the contest was published. According to the announcement, the applications for the participation in the competition could be filed from April 10 until May 3, 2017. At this stage, four persons applied, but their applications were not examined by the IC. Instead, on May 4, 2017, for no legitimate reason, the CI extended the deadline for submitting files until May 15, 2017.³

Meanwhile, one IC member, (the government-appointee) was also appointed by the Government as a judge to the Constitutional Court and submitted a request for resignation as a member of the IC. On May 31, 2017⁴, taking note of the resignation request, the Government noted the termination of this member's mandate, but appointed a new representative only on June 28, 2017⁵. The new appointed representative is an advocate (attorney)⁶. Thus, neither in this case, IC did not get the opportunity to effectively promote the NIA's needs at Government level, particularly the need to improve the legal framework in the field. Starting from the fact that the representative appointed by the Parliament is only a person from the associative environment, the IC is deprived of any mechanisms to influence the quality of the legal framework in the field.

On July 31, 2017⁷, again in a confusing way, the deadline for submission of files was extended, the announcement being published in the Official Gazette of the Republic of Moldova on August 4, 2017⁸, the deadline being 14 August 2017. It was argued that the examination of the files, three of the four files were incomplete, the candidates not confirming by signing the information in the statements of assets and personal interests. It should be noted that, under Art. 10 of the Law no. 132/2016, submission of the statements does not constitute an eligibility condition for the candidates. Also it is not clear to what extent these statements can be verified / controlled, this attribution going beyond the limits of competence of the IC provided by art. 12 paragraph (7) of the Law no. 132/2016.

¹ <http://ani.md/ro/node/168>

² <http://www.moldovacurata.md/news/view/regulamentul-de-alegere-a-conducerii-ani-contestat-de-societatea-civila>

³ <http://ani.md/ro/node/183>

⁴ Government Decision nr. 358 from 31.05.2017 on termination of the mandate of the member of Integrity Council

⁵ Government Decision nr. 475 from 28.06.2017 on assigning a member of the Integrity Council.

⁶ Initially the Government appointee was from the notary circle.

⁷ <http://ani.md/ro/node/195>

⁸ <http://ani.md/ro/node/196>

In the extended period, the same three people applied again, insisting on participating in the contest. In total, four candidates took part in the competition. On September 4, 2017⁹, the IC examined three out of four applications. The meeting was interrupted to request and examine additional information about one of the candidates, Anatolie Donciu. Donciu's candidacy was rejected on September 12, 2017¹⁰, with the vote of two members of the five attendees despite the provisions of Art. 12 paragraph (9) of the Law no. 132/2016, which stipulate that the decisions of the IC shall be adopted by the vote of the majority of the designated members. We can not expose ourselves to the legal reason for rejecting the candidacy, and that decision is incomplete in this respect¹¹. Also on September 12, 2017¹², the IC decided to extend the 10-day filing period for the position of ANI vice-president, starting from the fact that only one candidate (Lilian Chișcă) was running for this post after the exclusion of Anatolie Donciu. The actual announcement about the extension of the deadline for the application for the position of ANI Vice-Chair was published in the Official Gazette of the Republic of Moldova on September 15, 2017¹³.

As for the candidates for the presidency, Teodor Cărnaț and Victor Strătilă¹⁴, they supported the written test on 21 September 2017¹⁵, both candidates being admitted for the interview¹⁶, held on 26 September 2017¹⁷. At the moment, candidates will be subjected to the simulated behavior (polygraph) test.

Thus, more than one year after the adoption of the laws from the Integrity Package, their implementation did not go further than organizing the competition to fill the positions of Chair and Vice-Chair of the NIA, the procedures not yet being finalized. Obviously, the delaying the reorganization of this institution jeopardizes the process of control of wealth and personal interests.

Starting from the phrase "during the fiscal year", the text of art. 19 (a) and (d) of Law no. 132/2016 could be interpreted as limiting that control, but also its possible consequences, can only be applied for a period identical to that of the previous fiscal year. Similarly, due to the delays in the reorganization process, certain prescription terms may pass, particularly the terms of prescription terms for contravention liability.

It should be noted that, according to the information provided by NIA¹⁸, in the first semester of 2017, 74 petitions were submitted to the authority, with another 84 petitions of this type coming in 2016, after the entry into force of the new provisions all of which will be examined by integrity inspectors. Also 75 uncompleted control procedures from NIA's management are to be added, procedures that can be continued by integrity inspectors as well. Also, 55,710 declarations of assets and personal interests filed in the first half of 2017 remain to be checked by integrity inspectors, while the other 3,994 will come in 2016 after the entry into force of the new legal provisions.

Approval of the National Integrity and Anti-corruption Strategy (NIAS)

On March 30, 2017 the SNIA was approved by Parliament, the document being published only on 30 June 2017. The authorities also in this exercise replicate some of the vulnerabilities found in the process of evaluating the level of implementation of the National Anticorruption Strategy for 2011-2015¹⁹, such as delaying the process of adopting the strategy and action plans for its implementation, complex strategy architecture, poor strategic planning.

Adoption of Law no. 82/2017

On May 25, 2017, Law 82/2017 was adopted, which was published on July 7, 2017. Among the most controversial provisions of this law are those contained in Art. 13 par. (4). According to them, in order to ensure the professional integrity specific to the anticorruption authorities, the declarations of assets and personal interests of the public agents in these entities may be subject to additional verifications within the public entity

⁹ <http://ani.md/ro/node/200>, NIA, press-release, Members of the IC accepted the application of three candidates, the fourth candidate will be discussed in the next meeting.

¹⁰ <http://ani.md/ro/node/202>

¹¹ <http://ani.md/sites/default/files/documente/Hotararea%20nr%205%20-%201.pdf>,

<http://ani.md/sites/default/files/documente/Hotararea%20nr.%205%20-%202.pdf>

¹² <http://ani.md/ro/node/204>

¹³ <http://ani.md/ro/node/205>

¹⁴ Lilian Cisca withdrew from the application of the position of the Chair and maintained the application for the Vice-Chair of NIA.

¹⁵ <http://ani.md/ro/node/206>

¹⁶ <http://ani.md/ro/node/210>

¹⁷ <http://ani.md/ro/node/213>

¹⁸ <http://ani.md/ro/node/147>

¹⁹ http://cna.md/public/files/sna_rapoarte/Evaluarea_implementrii_SNA_2011-2015.pdf, NAC and Hanns Seidel Foundation, Evaluation of the Implementation of the National Anti-corruption Strategy for 2011-2015, 2016, p. 4.

they belong to, applying the consequences provided by the special legislation regulating the activity of the respective category of public agents.

In this case, according to the cited rules, the consequences imposed can not be less serious than the consequences imposed by the general rules. Obviously, through these rules, all anti-corruption authorities are attributed powers similar to those held by NIA. It is noteworthy that, for the purposes of Art. 3 of the Law no. 82/2017, anticorruption authority, in addition to ANI, is the National Anticorruption Center, the Anticorruption Prosecutor's Office, the Intelligence and Security Service, the Ministry of Internal Affairs (MIA). Besides, the reasons why MIA is included in the list of anti-corruption authorities, Law no. 82/2017 is not explicit in this respect. Certain is *the attribution of parallel competences to several anti-corruption authorities, which proves once again that there has been no genuine resettlement of the national anticorruption system.*

Starting the implementation process, following the amendments made to the Law no. 325/2013

In order to execute the Law no. 325/2013, on January 6, 2017, in the Official Gazette of the Republic of Moldova, the Regulation on the selection and designation of judges specialized in judicial control on professional integrity testing was approved, approved by the Decision of the Superior Council of Magistracy (SCM) no. 829/33 of 29.11.2016²⁰. Subsequently, on February 28, 2017, the *SCM appoints judges specialized in judicial control over professional integrity testing²¹, including several magistrates with integrity issues, previously targeted in journalistic investigations²²*. Obviously, *this compromises the instrument, which has been challenged by several civil society organizations from the start.*

Final statements:

- the authorities did not succeed to reset the national anti-corruption system. Moreover, the mechanisms become even more confusing by assigning the authorities of anticorruption (other than the NIA) the right to carry out additional checks on the declarations of assets and personal interests filed by their employees;
- the reform process of the NIA is slow, jeopardizing the potential effectiveness of controlling personal assets and interests in the public service;
- no matter how large the authorities expect from applying professional integrity tests, the impact will not be credible if people with integrity problems are involved in the process;
- delays in adopting and publishing the anti-corruption policy document indicate that the authorities do not succeed in becoming more effective in planning, which compromises the effectiveness of implementation.

²⁰ http://csm.md/files/Acte_normative/Legislatia/Interne/RegulamentSDJ.pdf

²¹ <http://csm.md/files/Hotaririle/2017/08/155-8.pdf>

²² <https://anticoruptie.md/ro/stiri/judecatori-cu-probleme-de-integritate-printre-magistratii-specializati-in-controlul-judiciar-asupra-testarii-integritatii-profesionale-desemnati-de-csm>