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**Expert Opinion on:
Moldovan Draft Law “On Institutional Integrity Assessment”**

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This paper presents an expert review/opinion based on an English translation of the Moldovan text of the Draft Law “On Institutional Integrity Assessment”.

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The views expressed herein can in no way be taken to reflect the official position of the European Union and/or the Council of Europe.

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1. SUMMARY

In December 2013, the Moldovan Parliament adopted the **Law No. 325** “On Professional Integrity Testing” [“privind testarea integrității profesionale”] which entered into force for all officials covered on 14 August 2014. In June 2014, members of the Communist Party filed a constitutional complaint against the Law to the Moldovan **Constitutional Court** challenging its validity. In the complaint review process the Moldovan **Constitutional Court** asked the Venice Commission in September 2014 for an *amicus curiae* brief regarding the applicability of integrity testing to judges. The **Venice Commission** provided the brief in November 2014, raising several concerns about the impact of the tests to judicial oversight, presumption of innocence, fair trial, and the right to privacy. In April 2015, the Court rendered parts of the Law **unconstitutional** by largely invoking the *amicus curiae* brief.

Following the decision of the Constitutional Court, the Moldovan authorities drafted amendments to the Law No. 325 in order to bring the Law in line with the Court’s decision. The amendments (“Draft Law No. 325”) bring about a major paradigm shift from the previous version. In particular, the Draft Law:

- Focuses primarily on **institutional** integrity;
- Clarifies that all disciplinary sanctions are only up to the **disciplinary** bodies or judicial courts;
- Installs a high-standard system of oversight, consisting of mandatory *ex ante* and *ex post* **judicial control**, combined with additional oversight by **parliament** and **civil society**;
- Provides full **online transparency** of the institutional assessments and tests while protecting the privacy of the tested subject.

With the above four main innovations, the Draft Law No. 325 does not seem to contain any contradictions with the **European Convention on Human Rights** (ECHR). Two potential legal risks in this context are worth mentioning, which the Draft Law appears to deal with sufficiently, though:

- Institutional integrity assessments under the Draft Law No. 325 include integrity tests regarding **members of Parliament** since the Moldovan Constitutional Court made it clear that in principle, integrity tests may apply to any professional category. Comprehensive judicial control, combined with parliamentary oversight should be sufficient to provide sufficient safeguards for the independence of parliamentarians in this context. Moving the general oversight of the National Anti-Corruption Center from the executive power to Parliament can be seen as an additional measure in this context (see comments under Article 5).
- According to the European Court of Human Rights (ECtHR), **provocation** of offences raises concerns in regards to the fair trial guarantee under Article 6 ECHR. The Court has however never discussed this issue in a disciplinary setting. It is a good feature in this regard that the Draft Law No. 325 cuts the previously existing link between the tests and the “trials” (a mandatory dismissal in case of a failed test). Accordingly, for the first limb of the process, the testing, the question of provocation would likely not come into play. As for any subsequent disciplinary proceedings, the situation is a bit vaguer in the absence of any directly applicable case-law of the ECtHR. However, it is certain that evidence gained through excessive provocations would be considered inadmissible even in disciplinary proceedings, under the existing ECtHR criminal trial guidelines. *Ex ante* judicial control over tests can facilitate setting proper limits (as foreseen under Article 12 subsection 7 of the Draft Law), complemented by *ex post* controls.

On the other hand, the Draft Law contains a partially risky solution for addressing disciplinary liability evasion which should be further addressed:

- It is necessary to ensure that public officials cannot avoid **disciplinary liability**. In the past, public officials **resigned** from the post before the disciplinary proceeding finished or had even started. By doing so, public officials avoided falling under a disciplinary ban of public office, and were accordingly able to reapply for another public sector position. The Draft Law No. 325 tries to resolve this problem by binding officials to stay in office for months or years until the disciplinary proceeding is finished. This would seem problematic (Article 4 ECHR “forced labour”) and is in any case not necessary as the Draft Law No. 325 foresees that violations of anti-corruption obligations by public officials are **recorded centrally**. This could be done without forcing the public officials to remain in his/her position, while still providing him/her with an option of challenging this record in court even after their resignation (see comments under Article 16).

Chapter 4 of this Opinion contains detailed consideration of the above and other technical issues related to each article of the Draft Law.

2. TERMS OF REFERENCE

On 3 September 2015, the National Anti-corruption Centre of Moldova asked the Council of Europe Economic Crime and Cooperation Unit to provide an expertise of the Draft Law “On Institutional Integrity Assessment” (in the consolidated version as amended by the Draft Law “On Amending and Completing Certain Legislative Acts”), hereafter the “Draft Law No. 325”. The Council of Europe Economic Crime and Cooperation Unit agreed to carry out this activity under the “CoE/EU Eastern Partnership Programmatic Co-operation Framework (PCF)” Project “Fight against Corruption and Fostering Good Governance/Fight against money-laundering” (in short: “EaP-Project Phase 2”), financed by the European Union and the Council of Europe.

The Expert Opinion is based solely on the English translations of the Draft Laws and the Draft Informative Memo submitted by the Moldovan authorities (see Appendix).

The Expert Opinion focuses on the compatibility of the Draft Law No. 325 with Council of Europe and other international anti-corruption standards. It also takes into account specific provisions from other laws, which the Draft Law No. 325 references. However, it does not assess the referenced provisions or laws in their entirety (e.g. Law on Preventing Corruption).

The Council of Europe standards relevant for this opinion are:

- Council of Europe Resolution (97) 24 On the Twenty Guiding Principles for the Fight against Corruption;
- Council of Europe Recommendation on “special investigation techniques”;
- European Convention on Human Rights.

This Expert Opinion does not review the compliance of the Draft Law No. 325 with the Constitution of the Republic of Moldova. Compliance of the Draft Law No. 325 with international standards will also depend, to large extent, on implementation, which, for obvious reasons, cannot be the focus of this analysis. This Opinion therefore only touches upon clear aspects of implementation, but does not provide an assessment of all possible ramifications of the enforcement of Draft Law No. 325 when cross-referenced with other Moldovan laws and practices.

The main objective of this Opinion is to analyse compliance with international anti-corruption standards. Inasmuch as specific solutions also engage international constitutional law and human rights standards, it does not seek to anticipate or replace opinions and decisions rendered by the competent organs of the Council of Europe (namely the European Court of Human Rights and the Venice Commission).

3. BACKGROUND

3.1. Brief overview on past developments

In 2012, the Moldovan Ministry of Justice drafted a “Law on Professional Integrity Testing” reportedly with help of international donors, in particular the German Corporation for International Cooperation (GIZ). The Council of Europe Economic Crime and Cooperation Unit provided an Opinion on the draft law in January 2013.¹

In December 2013, the Moldovan Parliament modified the draft and adopted Law No. 325 “On Professional Integrity Testing” [“privind testarea integrității profesionale”].² The Law was published on 14 February 2014 and, pursuant to its Article 21, entered into force on that date only for employees of the National Anti-corruption Centre who were to be tested by the Information and Security Service. For other public officials (i.e. 99.9% of the total), the Law No. 325 entered into force on 14 August 2014.

Following the constitutional complaint filed by members of the Communist Party against the Law, the Venice Commission was asked by the Moldovan Constitutional Court to provide an *amicus curiae* brief regarding the applicability of integrity testing to judges, which it did in November 2014.³ In April 2015, the Court rendered parts of the law unconstitutional.⁴ The Monitoring Committee of the Parliamentary Assembly of the Council of Europe noted in May 2015:

“While the Venice Commission challenged some provisions of a law to be applied to judges, the Constitutional Court invalidated the law as it would be applied to any public civil servant. [...] Transparency International Moldova incriminated a bad translation of the amicus curiae brief and a ‘manipulation’ by the Constitutional Court to dismiss the law.”⁵

¹ Council of Europe Secretariat (2013), *Opinion on Draft Law “On Professional Integrity Testing” of the Republic of Moldova*, available at <http://www.coe.md>, accessed 9 September 2015.

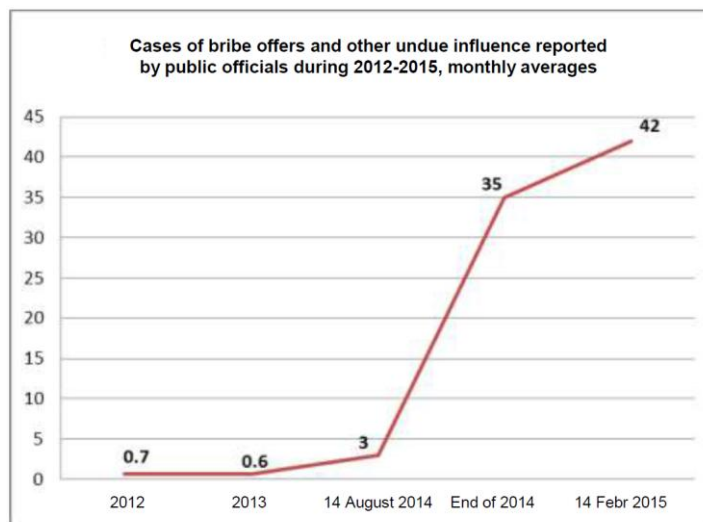
² *Law No. 325* of 23 December 2013 (Romanian and Russian), available at <http://lex.justice.md>, accessed 9 September 2015.

³ Venice Commission (2014), *Amicus Curiae Brief for the Constitutional Court of Moldova on certain provisions of the law on professional integrity testing*, CDL-AD(2014)039-e, available at <http://www.venice.coe.int>, accessed 9 September 2015.

⁴ Application no. 43a/2014, *Judgment No. 7 of 16 April 2015*, available at <http://www.constcourt.md>, accessed 9 September 2015.

⁵ Parliamentary Assembly of the Council of Europe, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe “Monitoring Committee” (May 2015), *Honouring of obligations and commitments by the Republic of Moldova Information note by the co-rapporteurs on their fact-finding visit to Chisinau and Comrat*, AS/Mon(2015)20 rev, at No. 37/footnote 27, available at <http://assembly.coe.int>, accessed 9 September 2015.

After the tests started being applied to all public officials it had significant effects:



(Data by National Anti-Corruption Center Moldova)

For example, for the first time in the history of the Republic of Moldova, judges started reporting bribes. The number of reports unfortunately started decreasing soon after the judges found out that the Law did not apply to them. On average, about 50 percent of the tested public servants failed the integrity tests that were done, with some institutions faring better than others.⁶ A comprehensive overview on integrity testing in Moldova can be found in a report by the National Anti-Corruption Center to the Moldovan Parliament.⁷

3.2. Main innovations of the Draft Law

The Draft Law No. 325 brings about the following main changes, in comparison to Law No. 325 from January 2015 (last available English version):

Law No. 325 as of January 2015	Law No. 325 as per Draft Law
Focus on individual integrity	Focus on institutional integrity
Sanctions contain mandatory dismissal	No mandatory dismissal or any other sanction automatically linked to the tests (Article 8 (1) e)
No ex ante judicial control of testing plans	Ex ante judicial control of testing plans (Article 10-1 (3))
Ex post judicial control under Article 3 of the "Law On Administrative Courts" upon motion by any tested public official	Ex post judicial control explicitly under Law No. 325 upon motion by any tested public official (Article 6 (1) d), and ex officio following every test (Article 12-1 (3))
Applies only to court employees such as registrars; does not apply to Members of Parliament.	Extends to courts and Parliament as public institutions and thus to all public officials/employees working there, including judges, Members of Parliament, and Government ministers (Article 5)
No enhanced responsibility of heads of public	Explicit obligations of heads of public

⁶ Latvian Interests in the European Union (2015), *Eastern Partnership: on the Way to the Riga Summit*, Special edition, page 51, available at www.esmaja.lv, accessed 9 September 2015.

⁷ National Anti-Corruption Center (February 2015), *Report on the implementation of Law no.325/23.12.2013 as of 14 February 2015 and on activities to test professional integrity carried out from 14 August 2014 to 30 January 2015*, available at: www.cna.md, accessed 9 September 2015.

institutions for integrity measures in their institutions	institutions for integrity measures in their institutions (Article 15 (4))
Confidentiality of test reports. Full availability of audio/video recordings (without tester identity visible) to offender and disciplinary body.	Full, online transparency of the test report including the audio/video-recording with the identity of the public official protected. Full transparency of the test report and recordings to the head of institution and the tested subject.

The main **objective** of the tests is to assess the “institutional integrity environment and the corruption risks of the public entity” (Article 4). For example, a test might reveal a pattern by which public officials abuse their procedural discretion by delaying provision of services, thus “passively” forcing citizens to pay for “expedited procedures”. A possible follow-up of such a finding could be limiting procedural discretion through clearly defined deadlines.

The institutional integrity assessment consists of **four stages** (Article 10):

- Stage 1: a risk assessment of the public entity by reviewing all available data
- Stage 2: integrity tests
- Stage 3: risk assessment report
- Stage 4: recommendations for reform measures
- Following Stage 4, the public entity adopts an **integrity plan** in order to implement the recommendations (Article 14 (2)).
- The level of implementation of the integrity plan is subject to review by another **assessment cycle** (Article 15).
- The **head** of the public entity is subject to liability for any disciplinary failure to adopt and implement the integrity plan (Article 15 (4)).
- Individual **public officials** can still be subject to disciplinary liability if, in the course of an institutional assessments, they violate their obligations, for example if they ask for a bribe (Article 16 (1)).

Judicial control of the institutional integrity assessment consists of the following main stages:

- Mandatory ex ante judicial approval of plans before any test is carried out (Article 10-2 (1));
- Mandatory ex post judicial control after tests are carried out (Article 12-1 (2));
- Mandatory ex ante judicial control of the existence of a disciplinary violation before the testing material is transferred to disciplinary bodies for a disciplinary proceeding (Article 12-1 (2));
- Right of all public officials to appeal to a court in case of a violation of their rights during the integrity assessment (Article 6 (1) d);
- Right of all public officials to challenge a disciplinary decision (Article 17).

4. COMMENTS ON ARTICLES OF THE DRAFT LAW

The Draft Law No. 325 (8,470 words) is more than double in **volume** than the original law from 2013 (4,012 words) and is very detailed. This is likely due to a need for very careful legislative crafting in light of the Constitutional Court decision related to the original Law. The text also indicates that the legislator took into account the decision of the Constitutional Court as much as possible, by building the amendments around the truncated structure of the original law which came about through deletion of provisions declared unconstitutional. The below comments pertain to specific article/s for which observations were considered warranted.

Article 1. Scope

Article 2. Purpose of the institutional integrity assessment

Article 3. Principles

Article 4. Concepts

Article 4-1. Institutional integrity environment

These articles document the main shift in focus under the Draft Law: individual disciplinary violations are no longer the main focus of the tests; **institutional set up** is. This includes an integrity plan (as defined in Article 4), proper internal instructions, internal risk assessment and oversight, audits, controls, training, human resource management, and everything else that is needed for preventing corruption. Article 4-1 lists the components of a public institution's integrity system.

Article 4 clarifies what is too often de facto missing in public institutions of transitioning countries: zero tolerance towards corruption. In the managerial hierarchy, the responsibility for installing such zero tolerance culture rests with the head of a public institution.

The shift away from individual disciplinary liability as the main focus may also help avoid possible human rights implications mentioned in earlier opinions by the Council of Europe: presumption of innocence, effective defence, proportionality of sanctions, *nulla crimen sine lege*, or fair trial.

Article 5. Subjects of institutional integrity assessment

This article extends integrity assessments to all public institutions. The previous version of Law No. 325 excluded members of parliament. However, this privileged treatment of parliamentarians was not perceived well by the public, nor with the Moldovan Constitutional Court. In its "General Conclusions" of its Judgment of April 2015, the Court stated:

"The Law excludes from its scope the President of the Republic of Moldova, the Prime Minister, the Members of Parliament [...]. [T]he Court notes, as a principle, that professional integrity testing may be applied to all professional categories of public agents. No professional category is, by its nature, excluded from professional integrity testing."⁸

Under the amended version of Law No. 325, parliamentarians would be included in the all-encompassing terms "public entity" and "self-governing body". From the perspective of fighting corruption, parliamentarians are important stakeholders: This group of officials exercises great power lending itself to be perceived as a high-priced "commodity". Integrity tests of parliamentarians done by journalists or NGOs in the past did uncover high-profile bribery cases.

⁸ Ibid, at no. 13 and 181.

Most recently, journalists conducted an integrity test at the European Parliament.⁹ The test led to the successful criminal prosecution of an Austrian, Slovak, and Romanian Member of European Parliament. Similar initiatives were also taken in other countries, such as Azerbaijan, where a secretly recorded video showed a Member of Parliament bargaining a seat in the Parliament for a price between 500,000 and 1 million US\$.¹⁰ She was subsequently convicted to three years imprisonment.¹¹

There may however be limits on the power of the executive to secretly tape parliamentarians beyond the remits of criminal investigations.¹² What parliamentarians think and talk about with their constituents is part of their independence and subject to a certain degree of confidentiality. However, this is largely a subject of Moldovan constitutional law. The Moldovan legislator will have to review if and what safeguards will be necessary and the Parliament itself will eventually decide on the fate of the law. It may be sufficient that integrity tests are subject to ex-ante (and ex-post) judicial control, and that Parliament is part of the oversight mechanism. In addition, one should consider whether the National Anti-Corruption Center should in general be exclusively overseen by the Parliament, as opposed to the Government, as is the case now. This way, the tests would not be a measure taken by the executive, but rather a body responsible to the Parliament itself. Bringing the Center under the Parliament's oversight would in any case be recommendable from the perspective of its "independence and autonomy" (Guiding Principle 3, Council of Europe 20 Guiding Principles for the Fight against Corruption).

Article 6. Rights and obligations of public agents

Article 7. Rights and obligations of public entities and self-governing bodies

Article 8. Rights and obligations of the institutions assessing the institutional integrity

These articles lay out rights and obligations of stakeholders. In principle, these articles do not raise concerns. One of the shortcomings of the previous version was lack of reference to the law which sets forth "**corruption acts**" that have to be reported (i.e. Article 16 of the Law on Preventing and Combating Corruption of 2008). Article 6 subsection 2 now includes a concrete reference to the Law on Preventing and Combating Corruption. Among corruption acts and "related" acts are: active and passive bribery, trading in influence, abuse of power or abuse of service, excess of power or *ultra vires*, legalisation of proceeds from corruption, obstructing justice, acquisition of (illegal) goods, causing damage to property by deception or abuse of trust, destruction or damage to property, protectionism, falsification of voting results, bribing voters, forgery of public documents, and falsification of accounting documents.

An important point in Article 6 (1) d is the right of public officials to appeal to **courts** if they feel an integrity test has violated their rights.

The definition of the right to be **informed** about the tests (Article 6 (1) c) is somewhat ambiguous if not viewed in the context of the entire law. It might read as if the public official has the right to be informed about any aspect of the integrity tests, including the identity of the testers. It is clear from Article 13 that this is not the case, and for a good reason. However, Article 13 foresees full online

⁹ BBC (9 August 2012), *Austrian ex-MEP on bribery charge over Strasbourg 'deal', A former Austrian interior minister and Euro MP, Ernst Strasser, has been charged in Vienna with corruption*, available at <http://www.bbc.co.uk>, accessed 9 September 2015.

¹⁰ Electionswatch (30 September 2012), *Ruling Party MP resigns, has party membership revoked as video reveals corruption at the heart of the political system in Azerbaijan*, available at <http://electionswatch.org>, accessed 9 September 2015.

¹¹ Radio Liberty (2 December 2013), *Ahmadova Sentenced to 3 Years*, available at www.azadliq.org, accessed 9 September 2015.

¹² See above footnote 1.

publication of the testing report (by protecting, of course, the identity of the public official) – see below Article 13.

Article 8-1. Testers' integrity

Article 8-1 sets forth integrity standards for testers in much more detail than any similar law in countries with long-standing **rule of law**, such as Australia. In fact, the integrity testing provision of the Australian law does not even contain any standard concerning the integrity of testers,¹³ as this is seen as an issue of work ethics.

Subsection 7 makes clear that testers are subject to **criminal** and administrative liability. It reads as follows:

“The tester using the materials accumulated during the performed professional integrity test for other reasons than those provided in this law shall be criminally or administratively liable for abuse of office, excess of duties, and other offences, as appropriate.”

Subsection 7 is an important new feature which addresses previously noted concerns “that the tester is allowed to enter into potentially criminal behaviour”.¹⁴ On a minor formal note, the words “as appropriate” seem to mean “as applicable” and might be worded as such in the Romanian original. If the wording in the Romanian original is “as appropriate” it would be somewhat ambiguous and should be erased, as liability is always appropriate if the elements of crime are fulfilled.

Article 9. Guarantees and responsibilities

Subsection 7 contains an important addition aimed at protecting **personal data** per Article 8 ECHR (right to privacy).

Article 9 (6) serves an important purpose: integrity testers might witness the commission of **offences** that are not the subject of integrity tests. For example, they might accidentally observe a public official or a citizen support a terrorist organisation; trade in drugs; or molest minors. Nonetheless, it would be irresponsible to let these offences go unreported. In terms of human rights, the use of accidental recordings of any such offences would be a question of admissibility of evidence (Article 6 ECtHR – fair trial). There is no case law, yet, by the ECtHR on this question, and certainly not in the context of administrative integrity tests. Even in the context of criminal law, the ECtHR is of the opinion that member States are primarily free to regulate the question of admissibility of evidence in their own discretion:

*“While Article 6 [fair trial] guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law [...]”*¹⁵

At the same time, however in the context of secret surveillance (in the criminal sphere) certain limitations do apply. In 2005, the Council of Europe issued Recommendation Rec2005(10) “on ‘special investigation techniques’ in relation to serious crimes including acts of terrorism”. The Recommendation is applicable to “techniques [...] in the context of criminal investigations” (Chapter I). No. 4 of the Recommendations states:

¹³ New South Wales Police Act 1990, [Section 207A](#), available at www.austlii.edu.au, accessed 9 September 2015.

¹⁴ See above footnote 3 at no. 55.

¹⁵ Gäfgen, *ibid*, at no 162; Bykov, *ibid*, at 88.

“Special investigation techniques should only be used where there is sufficient reason to believe that a serious crime has been committed or prepared, or is being prepared, by one or more particular persons or an as-yet-unidentified individual or group of individuals.”

In view of a lack of directly applicable case law of the ECtHR, the Moldovan legislator would need to clearly regulate the status of information/evidence obtained in this manner for any subsequent proceedings that would ensue from the report to competent authorities.

On a minor **formal note**, the wording of Article 9 (6) could be probably somewhat simpler and clearer. Instead of “activities ... which are not generated by application of the professional integrity testing plan” one could probably simply formulate “which are not violation of anti-corruption obligations”.

Subsection 5 of Article 9 is erased. This subsection dealt namely with **provocation** of bribery. Accordingly, Article 9 is now silent on agent provocateur situations. As noted above, the provocation claims only come into play in the context of a trial/hearing. The Draft Law No. 325 cuts the previous link between the testing phase and the disciplinary phase – a mandatory dismissal in case of a failed test.

There are various terms for provocation of criminal offences:¹⁶ entrapment; police incitement and agent provocateurs; or undercover operations. This paper will use the term agent provocateur. In principle, it is considered unfair if a defendant is convicted for a crime which the punishing State instigated from the very beginning. However, outside the sphere of establishment of innocence or guilt, there is no general prohibition on provocation of statutory violations. For example, in the United Kingdom, “Her Majesty's Revenue and Customs” (HMRC) sends out tax inspectors undercover:

“Examples include inspectors acting as customers needing haircuts to gain an understanding of how a salon operates. Other inspectors pose as couples out for a meal at a restaurant. The meal is later checked against the restaurant’s end-of-year books to see whether it has been properly accounted for. [...] On the same night as these mystery shopping exercises, inspectors are also likely to have an observation van carrying photographic equipment outside the business, counting the number of people going in or out. If they have seen 150 go in, but the books only account for 100, they could have a case for fraud against the business.”¹⁷

The subjects of such tests may feel ashamed if they fail the test. There might also be political controversies around such tests. However, the test in and of itself is not a violation of the fair trial principle. Per existing ECtHR guidelines, provocation of the violation only becomes an issue once the evidence gathered through it is used in **criminal** trial.

Integrity tests could for example involve a bribe giving/taking context, such as: “Would a bribe help?” or “How much do I need to pay to make this happen?” The tests could also be silently performed, for example, by placing note bills in documents to be submitted to officials. These tests could be used for assessing corruption risks in the respective public institutions.

A different question would be to what extent the results could be used in **disciplinary** proceedings against the tested subjects. If integrity testers want to keep the option open, to make any possible offender liable to disciplinary sanctions, they will have to keep certain limits regarding provocation.

¹⁶ ECtHR (2014), *Guide on Article 6 Right to a Fair Trial (criminal limb)*, page 26, available at www.echr.coe.int, accessed 20 August 2015.

¹⁷ Financial Times (16 November 2012), *Ten ways HMRC checks if you're cheating*, available at www.ft.com, accessed 9 September 2015.

There is no ECtHR case-law at the moment which discusses provocation in **disciplinary/administrative** settings. By contrast, there is abundant case law on (targeted) undercover operations against **criminal** suspects in the framework of police investigations. However, those guidelines can only at best be partially applicable to administrative integrity tests (with only disciplinary consequences being a possible follow-up). The following distinguish administrative tests from criminal undercover operations:

- Undercover operations by the police aim at proving **criminal guilt**, whereas administrative integrity tests assess whether public officials perform their **work duties** and have the necessary level of integrity.
- Public officials are explicitly **warned** in advance of possible tests.
- Administrative tests take place in the professional sphere of **public** offices, not in the private sphere of homes.

Other factors relevant for consideration of integrity testing:

- Public officials have to abide by **higher standards** of integrity than ordinary citizens.
- Public officials enjoy a **lesser** degree of protection under the ECHR in specific circumstances (e.g. in respect to privacy, free speech, and freedom of assembly).

The question to what extent a public official can be sanctioned disciplinarily in case of a provocation is an issue to be considered in respect to disciplinary proceedings. Moldovan disciplinary bodies and courts will have to beware of any excessive provocation in obtaining evidence, before applying sanctions. The newly introduced ex ante judicial oversight under Article 12 subsection 7 ensures that the tests themselves will not make use of excessive provocations.

In light of the absence of clear ECtHR case law on issue of provocation in disciplinary settings, the Moldovan authorities might wish to consider the following language in additions to Article 9 or as part of some bylaw:

8. The tester can explicitly or implicitly show his/her general willingness to provide an undue benefit. If a public official solicits an undue benefit, the person conducting the check may provide such undue benefit. The results of a test under this subsection can be used as evidence in disciplinary proceedings.

9. Integrity testers may offer appropriate and proportionate undue benefits outside the limit of subsection 8, without the tested person explicitly or implicitly soliciting it. The results of such a test cannot be used as evidence in disciplinary or other proceedings against the tested subject, unless there has already been sufficient evidence of his/her predisposition to committing the violation.

10. For subsection 8 and 9, the plan of the integrity check has to determine the conditions for providing the benefit; the procedure of providing it; and the type and maximum size of it.

Article 10. Institutional integrity assessment initiation

Article 10-1. Institutional integrity assessment stages

Article 10-2. Endorsement of the professional integrity test

In the context of initiating an assessment, the main innovation is the **ex ante judicial** control of the testing plan under Article 10-2. Ex ante judicial control is probably the strongest safeguard one can have in a democratic society. As the ECtHR put it:

“As regards the authority exercising control over covert operations, the Court has held that judicial supervision would be the most appropriate means; however, with adequate procedures and safeguards other means may be used, such as supervision by a prosecutor.”¹⁸

Article 10-2 even goes beyond the ex post facto judicial control noted by the Venice Commission in its *amicus curiae* brief to the Moldovan Constitutional Court.¹⁹

On a minor formal note, Article 10-1 (3) sentence 2 could probably be erased. It goes without saying that the “testers are responsible for performing the tests”. The provision might raise the wrong impression that testers are “free” to do the testing according to their own discretion, even though this is not the case if one takes into account the firm guidance provided in Article 11 for testers.

Article 11. Professional integrity test planning and fulfilment

The random selection of testing subjects is a point of particular interest (see above Article 10-2). The selection criteria and process are included under Article 11 (3) a; however, it might be worth mentioning them explicitly for example as follows: “including the random selection of testing subjects”.

Subsection 6 might require some clarification as it might appear to outside readers as granting too much discretion. The provision should read for example as follows: “Testers may deviate from the approved plan, if compelled during the testing situation by unforeseen circumstances, as long as the testing objectives and the conditions laid down in the endorsement decisions are kept.”

Article 12. Means and methods to test and set professional integrity tests

The most important point of Article 12 is subsection 2-2. It reflects the importance of judicial independence. The Council of Europe Recommendation on the Independence, Efficiency and Role of Judges defines judicial independence as:

*“In the **decision-making process**, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to **decide cases impartially**, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary.”²⁰*

¹⁸ Bannikova v. Russia, Application no. 18757/06, *Judgment of 4 November 2010*, § 50, available at <http://hudoc.echr.coe.int>, accessed 9 September 2015.

¹⁹ Venice Commission (2014), *ibid*, at no. 91.

²⁰ *Recommendation (94)12* of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges – Principle I.2.d), available at <https://wcd.coe.int>, accessed 9 September 2015, replaced by *Recommendation CM/Rec(2010)12* of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, see in particular no. 22, available at <https://wcd.coe.int>, accessed 9 September 2015.

Thus, independence does **not** extend to a judge as a **person**, but only pertains to his/her **decision making**. Judges can therefore enjoy immunity related to their decision making, but not as a personal privilege against a crime they commit outside of their professional function.²¹

The independence of judges serves the purpose of guaranteeing **citizens** a fair trial. Thus, Article 6 of the European Convention on Human Rights includes “an independent and impartial tribunal” into the key features of a fair trial. Similarly, the Council of Europe Recommendation “on judges: independence, efficiency and responsibilities” states:

“The external independence of judges is not a prerogative or privilege granted in judges’ own interest but in the interest of the rule of law and of persons seeking and expecting impartial justice.”²²

Undue influence represents the biggest threat to independent decision-making: A bribe, or any other type of undue influence, puts the independence of corrupt judges up for sale. Integrity tests aim at eliminating or substantially reducing the number of such incidents. They can therefore **protect** the **independence** of courts and can restore a system where citizens enjoy their right to an impartial judge.

However, it is important that an integrity test does not cause a judge to change his/her decision in a real life case. If a judge would only ask for a bribe during an integrity test, without getting the bribe, this would not be a problem. If the judge would receive a bribe following his/her request, the testing unit would need to make sure that this bribe will not actually influence the outcome of a trial, at least not a real trial (of course, testers could set up “fake” trials one against each other, which would not need protection by an independent judge). Subsection 2-2 of Article 12 clarifies the boundaries of testers towards judges.

As for the possible issue of provocation under Article 12 subsection 7, see the comments above under Article 9.

Article 12-1. Assessing the result of the professional integrity test

The eminent feature of Article 12-1 is the ex officio and ex post **judicial control** over all tests. It complements the ex ante judicial control. It is probably fair to say that few, if any, countries have such a tightly knit oversight mechanism for their covert measures, not even in the criminal sphere. In addition, it ensures that testers have no competence to decide themselves on the result of the test. Article 12-1 subsection 4 addresses situations where, for example, the testimony of a tester should become necessary.

Article 13. Report on institutional integrity assessment results and evidence-bearing materials

In the past, the Anti-Corruption Center presented the video only to the public official and the competent disciplinary commission. The revised Article 13 brings an important innovation to Law No. 325: full online and other forms of transparency of the testing results, including the audio/video-recording material. At the same time, it protects the privacy of the tested official, as

²¹ Venice Commission (2010), *Report On The Independence Of The Judicial System, Part I: The Independence of Judges*, CDL-AD(2010)004, at no. 56 f., available at www.venice.coe.int, accessed 9 September 2015; see also: Consultative Council of European Judges (CCJE), *Opinion no 1 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on standards concerning the independence of the judiciary and the irremovability of judges*, par. 11-12, available at <https://wcd.coe.int>, accessed 9 September 2015.

²² Recommendation CM/Rec(2010)12, *ibid.*

his/her identity cannot be shown in the public version. Similarly, the identity of testers is kept confidential.

Article 14. Public entity's actions after receiving the institutional integrity assessment report

Article 15. Repeated institutional integrity assessment. Consequences of integrity plan failure

Article 14 namely contains administrative procedures regarding the integrity plan following an institutional integrity assessment.

A key provision in this context is the responsibility of the head of institution for undertaking reform measures (Article 15 (4)). The inertness of leaders to actually implement corruption reforms, often called lack of political will, is the most frequently invoked critique of slow progress. It goes without saying that any omission by the head of an institution which is disciplinarily relevant should not go unsanctioned.

Subsection 5 addresses the inaction of disciplinary bodies despite compelling evidence for liability. There are various reasons for this such as: protection of peers; a corrupted disciplinary system; or simply the lack of understanding corruption offences. In its publication "Lessons learnt from the three evaluation rounds (2000-2010)", GRECO noted:

"Still, the ineffectiveness – often noted – of disciplinary proceedings creates the feeling that the system is corrupt overall."²³

In order to motivate disciplinary proceedings, GRECO

"considered in certain cases that to improve the effectiveness of, and the follow up to, such proceedings and to evaluate the relevance of the penalties, provisions should be made for establishing an appropriate system for registering disciplinary proceedings and sanctions and for centralising the relevant information, at least when they concern acts of corruption or related infringements."²⁴

External judicial control over a possible inaction of the disciplinary oversight body as proposed by Article 15 (5) is certainly another feasible and effective option in this context. In addition, the transparency of testing results will enable civil society to monitor the developments.

Article 16. Consequences of a negative result of a professional integrity test

In the context of Article 16, three points are relevant:

- a) The separation of disciplinary proceedings from the testing proceedings
- b) Sidestepping of disciplinary liability by public officials
- c) Ban on public office

- a) Separation of disciplinary proceedings

Article 16 clarifies that **disciplinary** liability is not a question of Law No. 325, but one up to the disciplinary bodies established under various legislation. The draft amendments eliminate the

²³ GRECO (2012), *Lessons learnt from the three evaluation rounds (2000-2010)*, page 16, available at www.coe.int, accessed 9 September 2015.

²⁴ Ibid.

mandatory dismissal under the erased subsection 2. This is an important innovation, as it disentangles two different stages: the testing on the one hand, and the disciplinary proceedings on the other. This solution also does away with a perceived prejudicial character of integrity tests.

b) Sidestepping of disciplinary liability by public officials

Subsection 3 pursues an important objective. Public officials caught asking for a bribe would go out of their way to avoid disciplinary proceedings. Some of the tactics used include:

- Public officials would hand in their **resignation**. Under Moldovan law, this would end the disciplinary proceeding. In this way, the public officials would not face a ban on public office and would be able to again apply for public office position.
- Public officials would orchestrate their own **transfer** to another authority, where they knew the disciplinary body would be lenient, for example because they had good connections there.
- Several public officials went on prolonged **sick leave** waiting for the statute of limitations to run out or of the decision of the Constitutional Court.

In case of resignations, it is important that the Moldovan disciplinary law allows for a ban on office to apply before the resignation of a public official becomes effective. In addition or alternatively, disciplinary proceedings could continue even after the resignation of a public official. It should be noted in this context that the United Kingdom faced a similar challenge in 2013. A parliamentary report complained about “numerous cases where police officers retire to avoid disciplinary proceedings, with no further repercussions”. It recommended “that hearings will be taken to their conclusion notwithstanding the officer’s departure from the force.”²⁵ In response, the “Government is currently taking forward legislation to ensure officers cannot resign or retire to avoid dismissal.”²⁶ It would equally be important not to allow for transfer of public officials while proceedings are pending. Furthermore, the statute of limitations should be suspended as long as a public official cannot take part in the proceeding, because for example he/she is sick.

The challenge in practice would be that a public official could not be forced to remain in the service for months or even years until after a disciplinary proceeding is finished. Such an obligation would probably amount to forced labour under Article 4 of the ECHR.²⁷ However, there are other options: However, any resignation from position should be subject to approval by the employer within a given time-limit, for example up to three months. Even if the resignation does not require approval by the employer, there is usually a minimum period of notice for civil servants in many countries, such as for example two or three months. Within this time-frame, a disciplinary body could determine a work related violation by the public official, based on which an employer could dismiss the official or could simply reprimand the public official for it, in cases where he/she has anyhow resigned. The reprimand would become part of the public official’s employment file and would therefore trigger the ban on public office.²⁸ The public official would obviously need to be provided with an opportunity to defend him/herself against the allegation/s.

²⁵ House of Commons (2014), Home Affairs Committee, *Leadership and standards in the police*, Third Report of Session 2013-14, Volume I, at no. 69, available at www.parliament.uk, accessed 9 September 2015.

²⁶ Home Office (December 2014), *Improving police integrity: reforming the police complaints and disciplinary systems*, at no. 3.14, available at www.gov.uk, accessed 9 September 2015.

²⁷ On the case law in general see: ECtHR (July 2014), *Factsheet – Slavery, servitude and forced labour*, www.echr.coe.int; ECtHR (2012), *Key Case-Law Issues, Prohibition of Slavery and Forced Labour, Article 4 of the Convention*, available at www.echr.coe.int, accessed 9 September 2015.

²⁸ The United Kingdom addressed a similar challenge in 2013. A parliamentary report complained about “numerous cases where police officers retire to avoid disciplinary proceedings, with no further repercussions”. It recommended “that hearings will be taken to their conclusion notwithstanding the officer’s departure from the force.” (House of Commons (2014), Home Affairs Committee, *Leadership and standards in the police*, Third Report of Session 2013–14, Volume I, at no. 69, available at www.parliament.uk, accessed 9 September 2015). In response, the “College of Policing, the professional body for police officers and staff in England and Wales, [...] has: [...] produced a national register of police

The legislation should also address situations where justified absence, such as sick leave, is used to drag disciplinary proceedings up to the point where resignations become effective. It would therefore be recommendable for Moldovan disciplinary laws to consider the UK model²⁹ whereby a serious ethics/anti-corruption obligation violation could still be determined **post-employment**, as long as the (former) employee has the rights to defend him/herself under the Constitution. Usually, disciplinary proceedings end with the resignation of a public official from office.³⁰ However, practice of other countries suggests that it would be good to have the option of having the results of an integrity test be entered into the official's file even after the public official left office.

In view of above, the Moldovan authorities should review the following part of subsection 3: "until finishing the disciplinary procedures, the public agent may not be dismissed based on the resignation application". This also concerns the respective provisions in Articles I to XXVII of the Draft Law "On Amending and Completing Certain Legislative Acts", for example Art. XXVII subsection 5: "The policeman cannot be dismissed based on the resignation application or transfer request, if the Minister was notified about the negative results of the professional integrity test, until the end of the disciplinary proceedings". Revised disciplinary provisions should contain the following elements:

- Resignations become effective only upon **confirmation** by the employer, which has to be given within a set period of time, such as two to three months. Alternatively: a minimum **notice period** for resigning applies, e.g. two or three months (which can be shortened if the employer agrees).
- Disciplinary proceedings can continue after resignation.
- Suspension of **statute of limitations** for any period the public official cannot take part in the disciplinary proceeding.

c) Ban on public office

Putting a ban on public office for disciplinary/corruption offenders is an important factor given the seriousness of one's previous misconduct in public office. Once a judge determines a violation of an anti-corruption obligation by the public official, this decision becomes part of a file for five years; decisions on minor integrity violations are part of the file for one year (subsection 7 of Article 16). The record is kept centrally with the National Anti-Corruption Agency. Public sector employers are obliged to consult the record before hiring any candidate. In principle, this system complies with the recommendation by GRECO "for establishing an appropriate system for registering disciplinary proceedings and sanctions and for centralising the relevant information" (see above under Article 15). As a judicial entity would decide on the result of the test, and not the testing entity, a sufficient separation of functions would exist.

officers dismissed from the police, or who might have been dismissed if the misconduct matter have been proven, but who resigned or retired before disciplinary proceedings concluded. The register has been made available to vetting and anti-corruption officers in police forces." (Home Office (December 2014), *Improving police integrity: reforming the police complaints and disciplinary systems*, at no. 1.5, available at www.gov.uk, accessed 9 September 2015).

²⁹ The United Kingdom addressed a similar challenge in 2013. A parliamentary report complained about "numerous cases where police officers retire to avoid disciplinary proceedings, with no further repercussions". It recommended "that hearings will be taken to their conclusion notwithstanding the officer's departure from the force." (House of Commons (2014), Home Affairs Committee, *Leadership and standards in the police*, Third Report of Session 2013–14, Volume I, at no. 69, available at www.parliament.uk, accessed 9 September 2015). In response, the "College of Policing, the professional body for police officers and staff in England and Wales, [...] has: [...] produced a national register of police officers dismissed from the police, or who might have been dismissed if the misconduct matter have been proven, but who resigned or retired before disciplinary proceedings concluded. The register has been made available to vetting and anti-corruption officers in police forces." (Home Office (December 2014), *Improving police integrity: reforming the police complaints and disciplinary systems*, at no. 1.5, available at www.gov.uk, accessed 9 September 2015).

³⁰ See for example Article 32 par. 2 No. 2 of the German Federal Disciplinary Law [*Bundesdisziplinargesetz*], available at www.gesetze-im-internet.de, accessed 9 September 2015.

In addition, the public official would have the possibility to challenge this decision anytime in court, even before the disciplinary body has finalised proceeding. Thus, the Moldovan law provides a similar mechanism as the United Kingdom which recently had to address the same problem: In 2014, the “College of Policing, the professional body for police officers and staff in England and Wales, [...] has: [...] produced a national register of police officers dismissed from the police, or who might have been dismissed if the misconduct matter have been proven, but who resigned or retired before disciplinary proceedings concluded. The register has been made available to vetting and anti-corruption officers in police forces.”³¹

The above observations apply respectively to the provisions in Articles I to XXVII of the Draft Law “On Amending and Completing Certain Legislative Acts”.

Article 17. Challenge of applied disciplinary sanctions

Article 17 is another welcome building stone in the extensive system of judicial control provided under the Draft Law No. 325.

Article 18. Keeping the recordings performed during the professional integrity tests

Article 18 brings an important clarification as it ensures that audio/video-recordings are stored in line with regulations on data protection. The referenced Law on Personal Data Protection is not part of this Expert Opinion.

Article 19. Parliamentary control over the institutional integrity assessment activity

It is highly unlikely that any parliamentary control is necessary given the tight ex ante and ex post judicial control over integrity assessments in addition to the oversight by civil society (online transparency). It is all the more laudable that Law No. 325 in its amended version would still foresee such oversight.

Article 19-1. Judicial control over the professional integrity testing activity

Subsections 2 and 3 define the special court under the full control of the judicial self-administration body, and with full transparency towards civil society. Both are important features to guarantee the independence of judiciary in this regard.

In addition, creating special courts seems a sensible option in this regard: Wherever corruption is (suspected to be) pervasive in the judiciary as well, the only way out seems to be the creation of an “island of integrity” in the judiciary.³² Any reform measure, as well designed as it may be, eventually depends on reliable courts. A corrupt judge can render any good governance measures useless, including disciplinary sanctioning. In Moldova, 36% of responding households in a survey by Transparency International paid a bribe to the judiciary in the last 12 months.³³ This is an

³¹ Home Office (December 2014), *Improving police integrity: reforming the police complaints and disciplinary systems*, at no. 1.5, available at www.gov.uk, accessed 9 September 2015.

³² Schütte S., Butt S. (2013), *The Indonesian Court for Corruption Crimes: Circumventing judicial impropriety?*, Chr. Michelsen Institute (U4 Brief 2013:5), www.u4.no; U4/Chr. Michelsen Institute (6 October 2003) Expert Answer, *Special courts for corruption cases*, available at www.u4.no, accessed 9 September 2015.

³³ Transparency International, *Global Corruption Barometer 2013*, Moldova, available at <http://www.transparency.org>, accessed 9 September 2015.

extraordinarily high figure, considering the fact that only a fraction of households would ever come into contact with the judiciary. The figure is also outstanding if one compares it regionally: In Ukraine, for example, the percentage is “only” 21%.

Article 20. Financing the measures

Article 21. Final provisions

Article 22. Transitory provisions

No comments.

5. CONCLUSION

The Draft Law No. 325 would bring major innovations to all points of concern raised in regards to the original version of the Law. That said, Chapter 4 of this Expert Opinion contains several points which the Moldovan authorities may want to consider as possible improvements.

The Moldovan authorities will have to make sure that officials are not forced to stay in office for months or years until a **disciplinary proceeding** is finished, beyond the usual periods of notice (e.g. two to three months). However, violations by public officials still need to be recorded centrally – as foreseen under the Draft Law No. 325.

Moldovan courts face a situation where there is no case law by the ECtHR on **provocations** in administrative proceedings and use of evidence gathered thereto in subsequent administrative/disciplinary proceedings. In that sense, the ex ante judicial control over tests is a good solution that may facilitate setting proper limits (as foreseen under Article 12 subsection 7).

6. APPENDIX

6.1. Law “On Amending and Completing Certain Legislative Acts”

[The following is an English translation of the draft law as provided by the Moldovan authorities. The draft law as shown below is for technical reasons without formatting.]

Draft

PARLIAMENT OF THE REPUBLIC OF MOLDOVA

LAW

on amending and completing certain legislative acts

The Parliament adopts this organic law.

Art. I. – The Law No. 544-XIII dated July 20, 1995 on Status of Judge (republished in the Official Gazette, 2013, No.15-17, art.63) with subsequent amendments, shall be completed as follows:

1. Article 6 para. (4) shall be completed with letter d) as follows:

“d) has been sanctioned disciplinary for not observing the obligations set forth in art.6 para.(2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

2. Article 9 shall be completed with para (8) as follows:

“(8) After submitting the set of documents, the Board for Judges’ Selection and Career shall request from the National Anticorruption Center and/or Security and Information Service the certificate of professional integrity record for the candidate to the positions set forth in para. (6)”.

3. Article 15 para. (1) shall be completed with letter d1) as follows:

“d1) to observe the provisions set in art.6 para. (2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

4. Article 25 para. (1) letter f) by the end shall be completed with the phrase: “ , as well as the violation of provisions set in art.4 para.(1) letter m1) of the Law No. 178 dated 25.07.2014 on Judges’ Disciplinary Liability.”

Art. II. – The Law No. 548-XIII dated July 21, 1995 on the National Bank of Moldova (Official Gazette of the Republic of Moldova, 1995, No.56-57, art.624), with subsequent amendments and completions shall be completed as follows:

1. Article 23 para. (5) after the phrase “financial and monetary area” shall be completed with the phrase “ , has no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para.(2) letter a) of

the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment,” afterwards following the existing text.

2. Article 34 shall be completed with para. (6) as follows:

“(6) The staff of the National Bank shall observe the provisions set forth in art.6 para.(2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

Art. III. The Law No.1036-XIII dated 17.12.1996 on Penitentiary System (republished in the Official Gazette of the Republic of Moldova, 2008, No.183-185, art.654), with subsequent amendments and completions, shall be completed as follows:

1. Article 18 para. (1) after the phrase: “were not convicted” shall be completed with the phrase: “have no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para.(2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”, afterwards following the existing text.

2. Article 20:

point 7) after the phrase “in case” shall be completed with the phrase “of violation of the obligation set forth in art.22 para.(2) letter a1),” afterwards following the existing text.

shall be completed with point 13 as follows:

“13) It is not admitted to dismiss the employee of the penitentiary system based on the resignation application or transfer request, if the General Director received from the National Anticorruption Center the report on institutional integrity assessment results, until the end of the disciplinary proceedings.”

3. Article 22 para. (2) shall be completed with letters a1) and a2) as follows:

“a1) to observe the provisions set in art.6 para. (2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

Art. IV. – Article 19 para. (1) of the Electoral Code No. 1381-XIII dated November 21, 1997 (Official Gazette of the Republic of Moldova, 1997, No.81, art.667), with subsequent amendments and completions, by the end shall be completed with the phrase: “ , and have no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para.(2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

Art. V. – Article 12 of the Law No.192-XIV dated November 12, 1998 on the National Financial Market Commission (republished in the Official Gazette of the Republic of Moldova, 2007, No.117-126BIS), with subsequent amendments and completions, by the end shall be completed with the phrase: “ , as well as has no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para.(2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

Art. VI. – Article 7 of the Law No. 753-XIV dated December 23, 1999 on the Security and Information Service of the Republic of Moldova (Official Gazette of the Republic of Moldova, 1999, No.156, art.764), with subsequent amendments, shall be completed with letter f) as follows:

“f) performing the institutional integrity assessment under the conditions set forth in the Law No. 325 dated December 23, 2013.”

Art. VII. – The Law on Service in Customs Bodies No.1150-XIV dated July 20, 2000 (Official Gazette of the Republic of Moldova, 2000, No.106-108, art.765), with subsequent amendments, shall be amended and completed as follows:

1. Article 6 para. (1) shall be completed with letter b1) as follows:

“b1) who has entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para.(2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

2. Article 15 para. (1) after letter k) shall be completed with letter l) as follows:

“l) to observe the provisions set forth in art.6 para.(2) of the Law No.325 dated December 23, 2013 on Institutional Integrity Assessment”.

3. Article 26 after the phrase “violation of duty discipline” shall be completed with the phrase “and of the obligations set forth in art.15 para. (1) letter l)” afterwards following the existing text.

4. Article 43:

para. (2) shall be completed with letter j1) as follows:

“j1) in case of violation of the obligation set forth in art.6 para.(2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

shall be completed with para (31) as follows:

“(31) It is not admitted to dismiss the customs officer based on the resignation application or transfer request, if the General Director received from the National Anticorruption Center the report on institutional integrity assessment results, until the end of the disciplinary proceedings.”

Art. VIII. – The Law No.761-XV dated December 27, 2001 on Diplomatic Service (republished in the Official Gazette of the Republic of Moldova, 2013, No.216-220, art.645), shall be completed as follows:

1. Article 10 para. (1) shall be completed with letter f1) as follows:

“f1) has no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para.(2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

2. Article 22 shall be completed with letter h) as follows:

“h) to observe the provisions set in art.6 para.(2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

3. Article 24 para (4) after the phrase “or governmental international organizations” shall be completed with the phrase “as well as in the case of violation of the obligation set in art.6 para. (2) letter a) of the Law No. 325 dated December 23, on the Institutional Integrity Assessment”, afterwards following the existing text.

4. Article 25:

in letter a) the phrase “provided under art.10 para.(1) letters a)-f)” shall be replaced by the phrase “provided under art. 10 para. (1) letters a)-f1)”.

the unique paragraph shall become paragraph (1);

shall be completed with para. (2) as follows:

“(2) It is not admitted to dismiss the employee of the diplomatic service institution based on the resignation application or transfer request, if the General Director received from the National Anticorruption Center the report on institutional integrity assessment results, until the end of the disciplinary proceedings.”

Art. IX. – The Law No. 1104 dated June 6, 2002 on National Anticorruption Center (republished in the Official Gazette of the Republic of Moldova, 2012, No. 209-211, art.683), with subsequent amendments, shall be amended and completed as follows:

1. Article 4, para. (1) letter e) shall have the following wording:

“e) performing the institutional integrity assessment, under the conditions set in the Law No. 325 dated October 23, 2013, monitoring the implementation of the integrity plans, and assessing the achieved progress”.

2. Article 5 shall be completed with letter c1) as follows:

“c1) to perform the institutional integrity assessment under the conditions set by the Law No. 325 dated December 23, 2013”.

3. In article 14 para. (2), the phrase “with the endorsement of the prosecutor” shall be replaced by the phrase “under the conditions of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

4. Article 16 para. (1) shall be completed as follows: “ , as well as the person who has entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para.(2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

5. Article 34 shall be completed with para. (4) as follows:

“(4) It is not admitted to dismiss the employee based on the resignation application or transfer request, if the General Director received from the National Anticorruption Center the report on institutional integrity assessment results, until the end of the disciplinary proceedings.”

Art. X. – The Labor Code of the Republic of Moldova No. 154-XV dated March 28, 2003 (Official Gazette 2003, No.159-162, art.648) with subsequent amendments, shall be completed as follows
ă:

1. Article 85:

shall be completed with para. (21) as follows:

“(21) The employee falling under the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment cannot be dismissed based on the resignation application or transfer request, if the employer received from the institution performing the institutional integrity assessment, the report on institutional integrity assessment results, until the end of the disciplinary proceedings.”

para. (3) the phrase “para. (1), (2)” shall be replaced by the phrase “para. (1)- (21)”.

2. Article 86 para. (1) shall be completed with letter k1) as follows:

“k1) the violation of the provisions set in art.6 para. (2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

Art. XI. – The Audiovisual Code No. 260-XVI dated July 27, 2006 (Official Gazette of the Republic of Moldova, 2006, No. 131-133, art.679), with subsequent amendments and completions, shall be completed as follows:

1. Article 42 para. (4) shall be completed with letter e) as follows:

“e) has no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para.(2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

2. Article 57 para. (1) shall be completed with letter e) as follows:

“e) has no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para.(2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

Art. XII. – The Law on Civil Protection and Exceptional Situations Service No. 93-XVI dated April 5, 2007 (Official Gazette of the Republic of Moldova, 2007, No.78-81, art.358) with subsequent amendments and completions, shall be completed as follows:

1. Article 17 para. (5) after the phrase “committing an offence” shall be completed with the phrase “as well as those who have entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions in relation to the institutional integrity assessment results.”

2. Article 29 shall be completed with para. (4) as follows:

“(4) It is not admitted to dismiss an employee based on the resignation application or transfer request, if the Head of the Civil Protection and Exceptional Situations Service received the report on institutional integrity assessment results, until the end of the disciplinary proceedings.”

3. Article 42 after letter g) shall be completed with letters h) and i) as follows:

“h) to observe the provisions set in art.6 para.(2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

4. Article 47 para. (1) shall be completed with letter e) as follows:

“e) violation of the obligation provided in art.42 letter h);”.

Art. XIII. – The Law No. 170-XVI dated July 19, 2007 on the Status of Security and Information Officer (Official Gazette, 2007, No.171-174, art.667) with subsequent amendments, shall be completed as follows:

1. Article (7) para. (3) shall be completed with letter f) as follows:

“f) has entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para.(2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

2. Article 31 para (3) shall be completed with letter a1) as follows:

“a1) violation of provisions set in art.6 para. (2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

3. Article 33 para. (3) after the phrase “title of information officer,” shall be completed with the phrase “in case of violation of the obligation set forth in art.39 para.(1) letter j1)”.

4. Article 36:

para. (1) shall be completed with letter o1) as follows:

“o1) violation of the obligation set forth in art.39 para. (1) letter j1;

after the para (3) shall be completed with para. (31) as follows:

“(31) It is not admitted to dismiss based on resignation application or transfer request, if the director received from the Internal Security Subdivision of the Service a notification regarding the negative result of the professional integrity test, until the end of the disciplinary proceedings”.

5. Article 39 para. (1) shall be completed with letter j1) as follows:

“j1) to observe the provisions set in art.6 para. (2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

6. In article 51 para. (7) letter c), the phrase “set forth in art.36 para. (1) letters i)-k), n) and p)” shall be replaced by the phrase “set forth in art. 36 para. (1) letters i)-k), n), o1) and p).”

Art. XIV. – The Law No. 25-XVI dated February 22, 2008 on Civil Servant’s Code of Conduct (Official Gazette of the Republic of Moldova, 2008, No.74-75, art.243), with subsequent amendments, shall be completed as follows:

1. It is completed with article 111 as follows:

“Article 111. Inappropriate influence

While exercising the service duties, the civil servant shall:

1) not admit inappropriate influences, according to the meaning provided in the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment;

2) perform legally the activity for which an inappropriate influence occurred;

3) immediately denounce in written form about the inappropriate influence occurrence to the head of the public authority or to the institution performing the professional integrity testing, as appropriate, according to the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment, under the conditions set by the Government.”

2. In article 12:

the title and para. (1) shall be completed by the end with the words “and favoritism”;

para. (3), after the words “conflicts of interest” shall be completed with the words “and favoritism”, and it shall be completed by the end with the words “and regarding preventing and combating corruption”.

3. Article 13 para (2) shall be completed with letter b1) as follows:

“b1) to observe the provisions set in art.6 para. (2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment;”

Art. XV. – The Law No. 134-XVI dated June 13, 2008 on State Protection and Guard Service (Official Gazette, 2008, No.120-121, art.470) with subsequent amendments, shall be completed as follows:

1. Article 13 para. (7) shall be completed by the end with the phrase “ , as well as those who have entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para.(2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

2. Article 192 para. (3) shall be completed with letter o) as follows:

“e) to violate the provisions set in art.6 para. (2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

3. Article 26:

para. (1) shall be completed with letter f1) as follows:

“f1) for violation of provisions set in art. 192 para. (3) letter o)”.

after para. (3) shall be completed with para. (31) as follows:

“(31) The employee may not be dismissed based on the resignation application or transfer request, if the Director of the Service received from the National Anticorruption Center the report on institutional integrity assessment results, until the end of the disciplinary proceedings.”

Art. XVI. – The Law No. 158-XVI dated July 4, 2008 on Public Office and Status of Civil Servant (Official Gazette, 2008, No.230-232, art.840) with subsequent amendments, shall be completed as follows:

1. Article 22 para. (1) shall be completed with letter f1) as follows:

“f1) to observe the obligations set in art.6 para.(2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment;”.

2. Article 27 para. (1) letter g) shall have the following wording:

“g) over the last 5 years, he/she was not dismissed from a public position according to art.64 para. (1) letters a) and b) or his/her individual work contract was not terminated due to disciplinary reasons;”

3. Article 63 shall be completed with para. (43) as follows:

“(43) It is not admitted to dismiss the civil servant based on para.(1) letter j), if the head of the public authority received from the National Anticorruption Center the report on institutional integrity assessment results, until the end of the disciplinary proceedings.”

4. Article 64 para. (1) letter a) after the words “applied for” shall be completed with the phrase “violation of provisions set in art.22 para.(1) letter f1)”;

5. Para. (1) article 65 by the end shall be completed with the phrase „ , except for the situation when the head of the public authority received from cu from the National Anticorruption Center the report on institutional integrity assessment results, until the end of the disciplinary proceedings.”

Art. XVII – Point 9 from the Regulation of the National Center for Personal Data Protection, Annex No. 1 to the Law No. 182-XVI dated July 10, 2008 approving the Regulation of the National Center for Personal Data Protection, the structure, the staffing limit, and the financing of the National Center for Personal Data Protection (Official Gazette of the Republic of Moldova, 2008, No.140-142, art.578), with subsequent amendments and completions, shall be completed with letter e) as follows:

“e) to observe the provisions set in art.6 para.(2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

Art. XVIII. – Article 7 para. (1) point 4) of the Law No. 245-XVI dated November 27, 2008 on State Secret (Official Gazette of the Republic of Moldova, 2009, No. 45-46, art.123), with subsequent amendments, shall be completed with letter a1) as follows:

“a1) the staff, forces, content, plans, organization, financing, and technical-material assurance, forms, tactics, methods, detailed means and information regarding the performance of the professional integrity testing, except for the data from the report on institutional assessment results”.

Art. XIX. – The Law on Court of Accounts No. 261-XVI dated December 5, 2008 (Official Gazette 2008, No. 237-240, art.864) with subsequent amendments, shall be amended and completed as follows:

1. Article 17 para. (2) after letter c) shall be completed with letter c1) as follows:

“c1) has entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para. (2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

2. Article 24 para. (1) after letter b) shall be completed with letter b1) as follows:

“b1) have no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para.(2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

3. Article 27 letter c) shall be edited as follows:

“c) violation of the provisions regarding the obligation and incompatibilities set forth in the Law No. 158-XVI dated July 4, 2008 on Public Office and Status of Civil Servant, Code of Ethics of the Court of Accounts, and Civil Servant’s Code of Conduct;”

Art. XX. – The Law No. 271-XVI dated December 18, 2008 on Verification of Candidates and Holders of Public Positions (Official Gazette, 2009, No.41-44, art.118), shall be amended and completed as follows:

1. Article 4 letter a) after the word “including” shall be completed with the phrase “those which determined the negative results of the professional integrity test and” afterwards the existing text.

2. Article 5 letter a) shall be edited as follows:

“a) in positions of public dignity which are held via a directly obtained mandate, as a result of elections, except for the parliamentary or local elections, or indirectly, through appointment, specified in the Law No. 199 dated 16.07.2010 on the Status of Persons with Positions of Public Dignity;”.

3. Article 10 para. (2) the first sentence at the end shall be completed with the phrase “and also requests from the National Anticorruption Center the certificate of the Professional Integrity Record”.

4. In Annex No. 2 the position “Criminal records” shall be completed with the words “/professional integrity”, and after point 29, it is completed with point 291 as follows:

“291. If you have obtained over the last 5 years a negative result for the professional integrity test.”

Art. XXI. – The Law No. 294-XVI dated December 25, 2008 on Public Prosecutor’s Service (Official Gazette, 2009, No.55-56, art.155) with subsequent amendments, shall be completed as follows:

1. Article 36 para. (1) shall be completed with letter e1) as follows:

“e1) has no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para. (2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity.”

2. Article 39 shall be completed with para. (21) as follows:

“(21) After submission of the set of documents, the Superior Council of Prosecutors requests from the National Anticorruption Center and/or the Security and Information Service the certificate of Professional Integrity Record of the candidate for prosecutor’s position”.

3. Article 54 shall be completed with letter d1) as follows:

“d1) to observe the provisions set in art.6 para. (2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

4. Article 61 shall be completed with letter j1) as follows:

“j1) violation of provisions set in art.54 letter d1”).

Article 66 para. (1) letter e) shall be completed as follows: “ , including of the disciplinary deviation provided in art.61 letter j1) ”.

5. In article 67:

para. (2) shall be completed as follows “ , and did not violate the obligations set forth in art.54 letter d1”.

shall be completed with para. (91) as follows:

“(91) The prosecutor cannot be dismissed based on the resignation application or transfer request, if the Superior Council of Prosecutors received from the National Anticorruption Center the report on institutional integrity assessment results, until the end of the disciplinary proceedings.”

Art. XXII. – The Law No. 199 dated July 16, 2010 on Status of Persons with Public Dignity Positions (Official Gazette of the Republic of Moldova, 2010, No.194-196, art.637), with subsequent amendments and completions, shall be completed as follows:

1. It shall be completed with a new article 51 as follows:

“Article 51. Obligation of professional integrity

The persons with positions of public dignity shall observe the provisions set in art.6 par. (2) letters a), b) and d) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

2. The annex to the law, after the position “Director, Deputy Director of the Security and Information Service” shall be completed with the position “Director General, Deputy Director of the National Anticorruption Center”.

Art. XXIII. – The Law on Competition No.183 dated July 11, 2012 (Official Gazette No. 193-197, art.667 dated 14.09.2012) with subsequent amendments and completions, shall be completed as follows:

1. Article 38 para. (3) by the end shall be completed with the phrase: “and observes the provisions set in art.6 para. (2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

2. Article 42 para. (5) after the phrase “good reputation” shall be completed with the phrase “has no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para. (2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity”, afterwards the existing text.

Art. XXIV. – The Regulation of the National Integrity Commission, Annex No. 1 to the Law No. 180 dated December 19, 2011 on the National Integrity Commission (Official Gazette of the Republic of Moldova, 2012, No.1-6, art.2) shall be amended and completed as follows:

1. Point 11 shall be completed with letter k) as follows:

“k) has no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para. (2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

Art. XXV. – The Law on Border Police No. 283 dated December 28, 2011 (Official Gazette, 2012 No.76-80, art.245) with subsequent amendments shall be completed as follows:

1. Article 12 para. (1) after letter n) shall be completed with letter n1) as follows:

“n1) to observe the provisions set in art.6 para. (2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”.

2. Article 16 para. (3) shall be completed with letter e) as follows:

“e) has entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para. (2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

3. Article 39:

para. (1) after letter n) shall be completed with letter n1) as follows:

“n1) violation of the obligation set forth in art.12 para. (1) letter n1);”

after para. (8) shall be completed with para. 81) as follows:

“81) It is not admitted to dismiss the border police officer based on the resignation application or transfer request, if the Head of the Border Police Department received from the National Anticorruption Center the report on institutional integrity assessment results, until the end of the disciplinary proceedings.”

Art. XXVI. – Article 11 para. (3) of the Law No. 121 dated May 25, 2012 on Ensuring Equality (Official Gazette of the Republic of Moldova, 2012, No.103, art.335), shall be completed with letter d) as follows:

“d) has no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para. (2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

Art. XXVII. – The Law No. 320 dated December 27, 2012 on Police Activity and Status of Policeman (Official Gazette, 2013, No.42-47, art.145), shall be amended and completed as follows:

1. Article 26 para. (1) shall be completed with letter k1) as follows:

“k1) to observe the provisions set in art.6 para. (2) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

2. Article 39:

para. (1) shall be completed with letter f) as follows:

“f) has no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para. (2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.”

after para. (2) shall be completed with para. (21) as follows:

“(21) Before hiring the candidate in Police, the employer shall request from the National Anticorruption Center and/or Security and Information Service the certificate of Professional Integrity Record of the respective candidate for the policeman position”;

para. (5) shall be completed with letter b1) as follows:

“b1) has negative results for the professional integrity testing, according to the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment over the last 5 years.”

3. Article 47:

para. (1) letter i) shall be completed with the phrase “under the conditions of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment.

after the para. (4) shall be completed with para. (5) as follows:

“(5) The policeman cannot be dismissed based on the resignation application or transfer request, if the Minister was notified about the negative results of the professional integrity test, until the end of the disciplinary proceedings”.

Art. XXVIII. – The Law No. 325 dated December 23, 2013 on Professional Integrity Testing (Official Gazette of the Republic of Moldova, 2014, No. 35-41, art.73), shall be amended and completed as follows:

1. The title of the law shall have the following wording: “on Institutional Integrity Assessment”.

2. In article 1:

the words “professional integrity testing” shall be replaced by “institutional integrity assessment”.

3. Article 2 shall have the following wording:

“Article 2. Purpose of the institutional integrity assessment

The institutional integrity assessment is performed to:

a) increase the accountability of heads of public entities and self-governing bodies for developing, maintaining, and enhancing the professional integrity environment within public entities;

b) secure professional integrity of public agents, to prevent and combat corruption within public entities;

c) identify, assess, and remove corruption risks within public entities;

d) increase the denunciation of corruption acts by public agents”.

4. Article 3 shall have the following wording:

“Article 3. Principles

The institutional integrity assessment process shall be performed under the mandatory observance of the following principles:

- a) legality;
- b) observance of the fundamental human rights and freedoms, of human and professional dignity;
 - b1) fair balance between the fundamental rights and freedoms of the citizens affected by public agents' corruption acts, on one hand, and the fundamental rights and freedoms of the public agents, on the other hand;
- c) unbiased, equitable, and non-discriminatory treatment of the public agents subject to testing;
- d) presumption of good faith of the assessment subjects;
- e) presumption of institutional integrity of the public entities;
- f) transparency of institutional integrity assessment results, with exceptions provided in the Law No. 245 dated 27.11.2008 on State Secret."

5. Article 4 shall have the following wording:

"Article 4. Concepts

For the purpose hereof, the following concepts shall have the following meanings:

public agent - a person employed within a public entity and exercising a public function, a special status public function, a public dignity function, a person employed in the office of the person exercising a public dignity function or providing services of public interest;

public entity – legal entity with the status of:

- a) public authority, central authority, specialized central public authority, local public authority, as well as the organizational structure under such authorities or from their area of competence;
- b) state, autonomous, independent, self-governing and/or regulatory authority, institution, body, organization, office or agency;
- c) Constitutional Court, court, Prosecutor's Office
- d) state enterprise, with state majority capital or municipal enterprise.;

services of public interest – performing activities for servicing the population in the public area, within institutions, enterprises, organizations, and other state structures, with state majority capital, municipal or local ones;

institutional integrity – professional integrity of all public agents from public entities, which is fostered, controlled, and enhanced by the heads of entities, as well as zero tolerance to public agents' corruption acts, by sanctioning their missing professional integrity;

professional integrity – performance of all professional activities by the public agent in an ethical manner, free of inappropriate influence and corruption acts, observing the public interest, supremacy of the Constitution of the Republic of Moldova and of the law;

institutional integrity assessment – the process of identifying corruption risks within public entities, assisted by analytical and practical methods (professional integrity testing), describing the factors determining the identified risks and their consequences, and providing recommendations for mitigating such risks, performed in compliance with the provisions set forth in this law.;

corruption risk – possible even of corruption act occurrence, affecting the achievement of public entity's objectives;

risk factor – a circumstance of any type, allowing, encouraging, and provoking the occurrence of corruption acts within the public entities or perpetuating them;

professional integrity test - the creation and application by the tester of certain virtual, simulated situations, similar to those in the work activity, materialized through dissimulated operations, conditioned on the activity and behavior of the tested public agent, in order to passively monitor and establish the reaction and conduct of the tested public agent, hence determining the level of damage to the institutional integrity environment and the corruption risks of the public entity within the institutional integrity assessment;

professional integrity testing – all the processes related to performance of the professional integrity test, a stage of the institutional integrity assessment;

tester – person from the National Anticorruption Center and Security and Information Service empowered by this law and by special laws with duties and competences to perform the professional integrity tests;

integrity incident – corruption act occurred in real circumstances, any other deed similar to the corruption act, occurred during a professional integrity test;

corruption acts – corruption deeds, corruption related acts and corruption behavior acts, specified in the Law No. 90 dated June 13, 2008 on Preventing and Combating Corruption;

integrity plan – internal plan adopted under the conditions of this law by the head of the public entity and/or self-governing body, as a result of the institutional integrity assessment, through which the institutional integrity environment may be developed and/or enhanced during the implementation period;

inappropriate influence – interference in the public agent's professional activity from third parties manifested through pressure, threats or requests in order to determine the respective public agent to perform his/her professional activity in a certain way, whenever the given interference is illegal and is not accompanied by promising, offering or giving, personally or through an intermediary, goods, services, privileges or advantages in any form, which are not due to him/her (does not meet the elements of an offense)".

6. Shall be completed with article 41 as follows:

"Article 41. Institutional integrity environment

(1) The public entities shall perform their activity in the public interest, ensuring the institutional integrity environment. The public agents shall exercise their duties with professional integrity.

(2) The institutional integrity environment shall be secured through enforcement of national and sector anticorruption policies, as well as of specific professional integrity requirements for the activity of the public agents within public entities. The following shall be deemed as national and sector anticorruption policies securing the institutional integrity environment:

- a) employment and promotion of public agents on merit and professional integrity basis;
- b) regime of incompatibilities, restrictions in hierarchy and limitations of publicity;
- c) regime of property and personal interests' declaration;
- d) regime of conflicts of interest;

- e) avoidance of favoritism;
- f) regime of gifts;
- g) denunciation and treatment of inappropriate influences;
- h) denunciation of corruption acts and protection of integrity denunciators;
- i) non-admission of corruption acts;
- j) transparency in decision-making process;
- k) access to information of public interest;
- l) transparent and responsible management of public patrimony, reimbursable and non-reimbursable finances;
- m) professional ethics and deontology;
- n) regime of restrictions and limitations related to termination of the mandate, work relations, duty relations, or migration to the private sector of the public agents (revolving doors).

(3) The provisions of para. (2) shall be applied appropriately for different categories of public agents, with the derogations provided by the special laws regulating the respective activity.

(4) The specific requirements of professional integrity for the activity of public agents from public entities shall be adopted through departmental acts of the public entities, which cannot provide for other derogations than those set forth in para. (3) or less rigorous behavioral standards for the heads of public entities and public agents than those provided by the national and sector anticorruption policies.

(5) The public entities shall determine the institutional policy for sanctioning any professional integrity lacking behavior of public agents, in compliance with the provisions of the legislation in force, aiming to discourage other public agents from such behavior in future”.

7. In article 5:

in the title of the article the words “professional integrity testing” shall be replaced by the words “institutional integrity assessment”;

in para. (1):

the words “professional integrity testing” shall be replaced by the words “institutional integrity assessment”;

the words “public entities” shall be completed with the words “self-governing bodies”;

the words “and professional integrity testers” shall be replaced by the words “National Anticorruption Center and Security and Information Service”;

para. (2) shall have the following wording:

“(2) The institutional integrity assessment shall be applied for public entities, providing the possibility to apply the professional integrity tests for public agents”.

para. (3) shall have the following wording:

“(3) The institutional integrity assessment and the professional integrity tests shall be performed by the National Anticorruption Center and Security and Information Service, involving testers”.

8. Article 6 shall have the following wording:

“Article 6. Rights and obligations of public agents

(1) Public agents shall be entitled:

a) to be informed about the specific professional integrity requirements for the public agents within public entities, as well as about the disciplinary sanctions which may be applied for nonobservance of such requirements, in compliance with the provisions set in art. 41;

b) to be informed about the integrity plan of the public entity, adopted after announcing the institutional integrity assessment results;

c) to be informed about the integrity tests performed in relation to them;

d) to challenge in the court the application of the integrity test performed in relation to them;

(2) Public agents shall have the following obligations:

a) not to admit corruption acts;

b) to denounce immediately to the competent bodies any attempt of being involved in the actions provided under letter a);

c) to know and to observe the duties they have to perform according to the national and sector anticorruption policies, provided under art. 41;

d) to know and to observe the specific professional integrity requirements for the activity of public agents within public entities, about which they were informed;

e) to perform the measures set forth in the integrity plan, adopted by the public entity, or, as appropriate, by the self-governing body, as a result of the institutional integrity assessment”.

9. Article 7 shall have the following wording:

“Article 7. Rights and obligations of public entities and self-governing bodies

(1) Public entities and self-governing bodies shall be entitled:

a) to be informed, within the deadlines provided herein, about the results of the institutional integrity assessment and application of professional integrity tests in relation to the public agents for whose ethics and discipline they are responsible for.

b) to deem the positive result of the professional integrity test as an additional reason to promote the public agent, without disclosing such reason.

(2) Public entities and self-governing bodies shall have the following obligations:

a) to foster the institutional integrity environment, as it is set forth in Article 41.

a1) to inform the public agents about the specific professional integrity requirements for the activity of public agents within public entities, as well as about the disciplinary sanctions which may be applied for non-observances of such requirements, in compliance with the provisions set in art. 41;

a2) to inform the public agents, with a signature-based confirmation, about the possibility to be subject to the professional integrity test. Such information shall be provided upon the appointment of the newly-employed public agents; and for the public agents employed upon the coming into force of this law – within the deadlines set in the final and transitory provisions. The non-

information of the public agent by the public entity or the non-signature of the information confirmation by the public agent based on this law shall not be a barrier to perform the professional integrity tests in relation to such a public agent, to undertake the institutional integrity assessment of the public entity, as well as to apply the disciplinary sanctions in compliance with the legislation in force;

a3) to adopt, secure, and report the implementation of the integrity plans within the deadlines set in this law;

a4) to inform the public agents about the performed professional integrity tests concerning them;

a5) to take the necessary measures concerning the public agents who underwent the testing, based on the qualification of the behavior they proved to have during the test and the evidences confirming it;

b) to ensure the access of the institution assessing the institutional integrity to all the registers and record forms fostering the institutional integrity environment provided in art.41, including in electronic format, as well as to any other necessary information under the conditions and limits set in letter e) Article 6 of the Law No. 1104 dated June 6, 2002 on National Anticorruption Center and letter j) para. (1) Article 9 of the Law No. 619 dated October 31, 1995 on State Security Bodies.

c) to allow withdrawal of the documents submitted to the public entity during the professional integrity test, of the audio-video recordings performed by the public entity during the professional integrity test, and to undertake other measures necessary to secure the confidentiality of testers, codifying documents, special means and techniques used during the professional integrity test.

10. Article 8 shall have the following wording:

„Article 8. Rights and obligations of the institutions assessing the institutional integrity

(1) The institutions assessing the institutional integrity shall be entitled:

a) to determine, under the conditions of this law, the areas for performing the institutional integrity assessment, assessed public entities, categories of public agents from the public entities subject to random professional integrity tests, and frequency of assessments;

b) to organize and benefit from special trainings on methods and means applied within the professional integrity testing;

c) to use within the professional integrity testing documents encoding the identity of persons, structures, organizations, premises, and transportation means, as well as the identity of the persons set in art.12 para. (2);

d) to perform repeatedly an institutional integrity assessment of a previously assessed public entity in order to verify the progress for enhancing the institutional integrity as a result of the integrity plan adoption and implementation;

e) to suggest the hierarchically superior public entities or self-governing bodies to dismiss the heads of the public entities subject to repeated assessment provided in letter d), if the integrity plan failed;

f) to challenge the decisions of the public entities' heads in relation to the reports on institutional integrity assessment and the refuse of the hierarchically superior public entities to proceed with the proposal provided in letter e) in the administrative dispute court, observing the prior procedures.

(2) The institutions assessing the institutional integrity shall have the following obligations:

a) to ensure confidentiality of testers' activities, codifying documents, and special technical means used during the testing, except for the cases provided in this law;

a1) to observe the regime of personal data protection, under the conditions set in the Law No. 133 dated July 8, 2011 on Personal Data Protection, except for the cases provided in this law;

b) to send to the heads of the public entities or, self-governing body, as appropriate, the full version of the report on institutional integrity assessment, according to the provisions set in art.13 para.(21) letter a);

b1) to publically release the depersonalized version of the report on institutional integrity assessment results, according to the provisions set in art.13 para. (21) letter b), simultaneously with sending the full version to the public entity or to the self-governing body, as appropriate;

b2) to publically release the full version of the report on institutional integrity assessment results, according to the provisions set in art.13 para. (21) letter a), if the assessed public entity has no hierarchically superior entity, as well as if the integrity plan adopted by the self-governing body failed;

c) to undertake all the measures to prevent the eventual negative consequences for third parties in relation to the performance of the professional integrity test;

d) to ensure the destruction of the audio/video recordings performed during the integrity test within the deadlines set in art. 18 para. (1);

e) to adopt and publish the methodology for identification of corruption risks and analysis of risk factors, within the institutional integrity assessment.

(3) The obligations of the institutions assessing the institutional integrity shall duly cover the testers and the persons analyzing the corruption risks within public entities”.

11. Shall be completed with article 81 as follows:

“Article 81. Testers' integrity

(1) The institutions assessing the institutional integrity shall ensure testers' integrity, adopting internal policies for this purpose, in compliance with the provisions set in this article.

(2) The candidates for tester's position shall be subject to a prior special control, mandatory polygraph testing, and psychological tests related to the integrity of their professional past, in order to establish existing inappropriate motivations to perform the activity of professional integrity testing, and other relevant aspects stated in the internal policies.

(3) To ensure objectiveness and to conspire the professional integrity testing activities, the testers shall be subject to periodical polygraph verifications, psychological verifications, lifestyle monitoring, and professional integrity tests, according to the competences set in art.5, as well as according to the extended obligation to state the potential personal interests and conflicts of interest, in relation to the general legal regime applicable to public agents.

(4) The extended obligation to state the potential personal interests and conflicts of interest implies the obligation for the selected testers to submit a statement, under their own responsibility, regarding their previous jobs, kinship, friendship or hostility relations from their private lives with any public agents, whose testing falls under the competence of the institution they are a part of. The submitted statement shall be updated by the tester once biannually, as well as whenever the tester finds out that he/she is to perform a professional integrity testing of a public agent, the private life relations with whom were not included in the submitted statement and/or not updated

previously. The respective statement shall be submitted to the testing activity coordinator, according to the template provided in the internal policies set forth in para. (1).

(5) If during the performance of the professional integrity test, the tester finds out that he/she knows in private settings the public agent subject to the respective test, and the tester did not know that the respective public agent works in the respective public entity, he/she shall undertake, if possible, actions to avoid the professional integrity testing of the respective public agent and to stop such testing, in order not to admit the testing activities' uncovering.

(6) The result of the professional integrity test performed in relation to a public agent with violation of provisions set in para. (4) and para. (5) shall be assessed by the specialized court as inconclusive, under the conditions set in art. 121.

(7) The tester using the materials accumulated during the performed professional integrity test for other reasons than those provided in this law shall be criminally or administratively liable for abuse of office, excess of duties, and other offences, as appropriate.

(8) The testers' integrity obligations provided in this article shall be applied accordingly to the testing activity coordinator as well

12. In article 9:

para. 1:

the words "a negative result" shall be replaced by the words "the public agent's behavior is assessed as a negative result";

the phrase "para. 2" shall be excluded;

para. 4 the words "The relation on" shall be excluded;

para. 5 shall be abrogated.

para. (6) and (7) shall have the following wording:

"(6) By derogation from the provisions set in para. (2) of this article, if during the professional integrity test performance, the tester finds out real illegal activities carried out by tested public agents or third parties, which are not generated by application of the professional integrity testing plan, the institution performing the institutional integrity assessment shall notify the competent body for measures provided by the legislation in the area to be taken.

(7) The persons from the institution assessing the institutional integrity shall be liable for disclosing the confidential data provided in art.7 para. (2) letter b), the information related to private life beyond the professional activities of the public agent and for publishing the personal data in contradiction to the provisions set in art.8 para. (2) letters a) and a1) which became available to them during the performance of the professional integrity tests."

13. The title of Chapter II shall have the following wording:

"Institutional Integrity Assessment Procedure".

14. In article 10:

In the title, the words "professional integrity testing" shall be replaced by the words "institutional integrity assessment"

Para. (1):

In the first sentence, the words “Professional integrity testing” shall be replaced by the words “Institutional integrity assessment”

letter a) the words “public agents from the public entities provided in the annex” shall be replaced by the words “public entities under the jurisdiction of this law”;

letter c) shall have the following wording:

“c) the internal security subdivision of the Security and Information Service – regarding the Security and Information Service. In this case, the internal security subdivision of the Security and Information Service has the possibility to go through all the assessment stages provided in art.101 or only the stage of professional integrity testing of the public agents from the Security and Information Service”.

para. (2) and (3) shall be abrogated.

15. Shall be completed with article 101 as follows:

“Article 101. Institutional integrity assessment stages

(1) The institutional integrity assessment shall be performed through the following stages:

- Stage 1. Identification of corruption risks within the public entity;
- Stage 2. Testing the professional integrity of public agents;
- Stage 3. Description of corruption risks and analysis of factors generating such risks;
- Stage 4. Recommendations for improving the institutional integrity environment.

(2) Stage 1 shall be carried out based on the examination of the integrity incidents admitted by the public agents from the public entities; information sent by the citizens, materials from mass-media; analytical sources (reports, studies, surveys, indicators, etc.); as well as of the modalities affecting the human rights through the identified corruption risks.

(3) Stage 2 is an optional stage of the professional integrity test. The tester shall be responsible for performing this stage. The public agents to be subject to testing shall be selected on random basis, depending on the corruption risks identified in line with para. (2). The motivated decision to initiate the professional integrity testing of the public agents within a public entity shall be taken by the institution assessing the institutional integrity, with the endorsement of the specialized court, under the conditions set in art. 102, without prior information of the given public entity management or of the self-governing body, as appropriate.

(4) Stage 3 shall be carried out by describing the corruption risks identified during the stage 1 and, where appropriate, confirmed during the professional integrity testing in stage 2 of the assessment, as well as by analyzing the risk factors which increase the likelihood of such risks' materialization. The analysis shall be carried out according to the following risk factors' types:

- a) external factors – risk factors which are outside the control of the public entity;
- b) internal factors – organizational, control, and sanctioning risk factors which are under control of the public entity, which are the result of their action or lack of action;
- c) operational factors – factors emerging during the activity of the public entity;
- d) individual factors – factors which may motivate a certain public agent to admit corruption acts and to act contrary to the institutional integrity environment.

(5) Stage 4 implies setting some minimum requirements and meeting these requirements would allow the public entity to reduce the corruption acts among the public agents.

(6) If the institutional integrity assessment is performed without stage 2 of professional integrity testing, stages 3 and 4 shall follow the fulfilment of stage 1”.

16. Shall be completed with article 102 as follows:

“Article 102. Endorsement of the professional integrity test

(1) The decision to initiate the professional integrity test within the institutional integrity assessment shall be taken by the institution assessing the institutional integrity and endorsed by the specialized court. The decision to initiate the professional integrity test and the endorsement shall be confidential until the submission of the institutional integrity assessment report.

(2) The motivated decision to initiate the professional integrity test shall indicate:

a) the reasons for initiating the professional integrity test within the public entity;

b) the corruption risks identified within the public entity subject to assessment;

c) the objectives of the professional integrity testing of the public agents within the entity;

d) the criteria for selecting the public agents in the public entity to be subject to the professional integrity testing;

e) the possibility of using the audio/video recording means, communication means, and other technical means for obtaining information in a concealed way, as well as the possibility to offer, promise or send goods, services, provision of privileges and advantages, in order to capture the public agents’ behavioral acts and not to disclose the testers’ activity.”

17. Article 11 shall have the following wording:

“Article 11. Professional integrity test planning and fulfilment

(3) The professional integrity test plan is a confidential document, which is approved by the coordinator of the professional integrity testing activity, based on the motivated decision endorsed by the court according to art. 102 ; it shall contain the following information:

a) the initiator of the test and the motivated decision to initiate the test;

a1) testing objectives;

b) testing subjects;

c) envisaged dissimulated operations;

d) place, duration, participations, and logistical assurance of the testing;

e) simulated virtual situations, behavior hypotheses and action options of the professional integrity tester and the tested public agent;

f) other information relevant for performing the test.

(5) During the professional integrity testing, the testers shall undertake the necessary measures to support the simulated virtual situations, planned in line with para.(3) letter e), hence ensuring the fulfilment of the plan’s provisions. Upon the request of the institution assessing the institutional

integrity, other state institutions shall provide free-of-charge assistance to carry out the measures for supporting the simulated virtual situations.

(6) In certain contingencies, the testers may deviate from the approved plan, to the extent in which their actions contribute to the achievement of the testing objectives and do not lead to chancing the motivated decision endorsement conditions, set forth in art.102.

(7) If the contingencies emerged during the enforcement of the plan lead to identification of new corruption risks unforeseen in the motivated decision, the motivated decision completed with the new identified risks shall be endorsed by the specialized court within 3 working days since the occurrence of the respective contingencies. If the judge refuses to endorse, the materials accumulated by the tester in the given contingencies shall be destroyed, except for the cases when these materials are necessary for the purpose of art. 9 para. (6).

(8) If needed, when performing the professional integrity testing, the testers shall collaborate with the representatives of the public entities in which the tested public agents work, under the conditions of this law and of the special rules regulating the cooperation in the area.”

18. Article 12 shall have the following wording:

“Article 12. Means and methods to test and set professional integrity tests

(1) The testers shall perform their activity on confidential basis. They may use for this purpose the means and methods set forth in art.8 para. (1) letter c).

(2) In exceptional cases, other persons may participate in performing the professional integrity testing, with the prior approval and guarantees that they will not disclose the performed activity.

(21) The professional integrity tests shall be performed observing the fundamental rights and freedoms of the public agent. The possibility to restrict such rights and freedoms during the professional integrity testing shall be provided in the motivated decision to initiate the professional integrity test, endorsed by the judge under the conditions set in art. 101 para. (3).

(22) During the professional integrity testing of judges, the institutions assessing the institutional integrity and the testers shall observe the guarantees of judges’ independency, being prohibited to interfere in justice application in real cases trialed in courts.

(3) To capture the behavior of the public agent under the professional integrity testing, there shall be used means for audio/video recording, communication means, other technical means for obtaining information in a concealed way, held by the institutions assessing the institutional integrity or from other sources, and the possibility to send the goods, to provide services, to grant privileges and advantages shall be provided only if it is reflected in the motivated decision to initiate the professional integrity testing, endorsed by the judge under the conditions set in art. 102”.

19. Shall be completed with article 121 as follows:

“Article 121. Assessing the result of the professional integrity test

(1) It is considered to be:

a) positive result of the professional integrity test – the situation when the public agent proves to have professional integrity, observing the obligations set forth in art. (6) para. (2) letters a)-c)

b) negative result – the situation when the obligations set in art.6 para.(2) letters a)-c) are not observed;

c) inconclusive result – and the situation when the behavior of the public agent can be classified neither as positive result nor as negative result, as well as the situation when the integrity test was performed with violations of the provisions set in this law.

(2) The materials of the professional integrity tests shall be verified by the judge from the specialized court which has endorsed the decision to initiate the testing. While verifying, the judge shall review how the tester has observed the motivated decision to initiate the test, shall confirm or change the proposal of the institution assessing the institutional integrity regarding the assessment of the tested public agent's behavior, and shall determine the test results in compliance with the provisions set forth in para. (1).

(3) The judge shall decide upon the assessment of the public agents' testing results as positive, negative and inconclusive through a decision. At the same time, the judge shall decide within the same decision or another decision for the tested public agents to return / voluntarily recover the assets, according to the situation set forth in art.16 para.(5).

(4) Upon the request of the institution assessing the institutional integrity, the judge shall solve via a decision any other situation emerged during the professional integrity testing, in order to secure the observance of fundamental human rights and freedoms, not to disclose the identity of the testers and to conspire the testing activity”.

20. Article 13 shall have the following wording:

“Article 13. Report on institutional integrity assessment results and evidence-bearing materials

(1) After passing through all the stages set forth in art. 101, the institution assessing the institutional integrity shall compile a report on assessment results, which will cover the following information:

- a) the initiator of the institutional integrity assessment and the assessment stages;
- b) the corruption risks affecting the activity of the public entity;
- c) the findings regarding the integrity environment in the public entity, in line with the provisions set in art. 41;
- d) the integrity incidents admitted by the public agents;
- e) the results of the professional integrity testing of public agents, describing the performed testing activities according to the test plan, as well as the behavior and actions of the public agents during the testing;
- f) how the human fundamental rights and freedoms are affected by the corruption acts in the public entity;
- g) recommendations / minimum requirements for removing the corruption risks.

(2) The report drafted under the conditions of para. (1) shall be compiled so as not to allow the disclosure of the persons involved in performing the professional integrity test, the forces, means, sources, methods, and activity plans of the National Anticorruption Center and of the Security and Information Service, as well as other information with limited accessibility.

(21) The report mentioned in para. (1) shall be concluded in two versions:

- a) full version, containing data about the tested public agents' identity;

b) depersonalized version, without including data about the identity of tested public agents, such as name, surname, as well as other data leading to public agents' identification.

(3) The original audio/video recordings performed during the integrity testing shall be annexed to the full version of the report concluded under the conditions set in para. (1) and shall be kept, on mandatory basis, together with the full version of the report in the institution which has carried out the institutional integrity assessment.

(4) The full version of the report on institutional integrity assessment results shall be submitted to the head of the public entity or to the self-governing body, as appropriate, within three working days since the moment the report is finalized. At the same time, the copies made under the conditions set in art.14 para.(8) of the original audio/video recordings and other materials confirming the negative results of the professional integrity test shall be also submitted, with the note about their confidential nature and the liability for disclosing other persons than those mentioned in art. 14 para. (81).

(5) The depersonalized version of the report on institutional integrity assessment results shall be released publically on the webpage of the institution which has performed the institutional integrity assessment, alongside the submission of the full version of the report, under the conditions set in para. (4).

(6) By derogation from the provisions set in para. (5), the full version of the report on institutional integrity assessment results shall be published on the webpage of the institution which had assessed the institutional integrity of the public entities which do not have a hierarchically superior public entity, and for whose public agents the legislation does not provide the possibility of being held disciplinary liable, as well as in the situations set forth in art. 15 para. (6).”

21. The title of Chapter III shall have the following wording: “Consequences of the Institutional Integrity Assessment and Professional Integrity Test”.

22. Article 14 shall have the following wording:

“Article 14. Public entity’s actions after receiving the institutional integrity assessment report

(1) The public entity or the self-governing body, as appropriate, shall review the institutional integrity assessment report immediately after submission.

(2) If the institutional integrity assessment report determines corruption risks in the public entity, the public entity or the self-governing body, as appropriate, shall adopt an integrity plan within one month since the day the report was submitted.

(3) The integrity plan shall be implemented within two months since the day it was adopted, ensuring at least the fulfilment of the recommendations / minimum requirements formulated in the institutional integrity assessment report. The integrity plan shall cover:

- a) corruption risks (according to the report);
- b) actions for reducing / excluding the risks;
- c) deadlines;
- d) indicators;
- e) responsible people.

(4) For the corruption risks described in the institutional integrity assessment report, the occurrence of which is determined by external risk factors, the public entity or the self-governing body, as appropriate, shall include indirect actions preparing the mitigation of such risks in the integrity plan.

(5) During the development of the integrity plan, the public entity or the self-governing body, as appropriate may organize consultations with the civil society. The institution which has assessed the institutional integrity shall provide, upon request, methodological support for the given process. The responsibility for adopting and implementing the integrity plan belongs exclusively to the public entity or self-governing body, as appropriate.

(6) Upon the expiration of the deadline set in para. (3), the public entity or the self-governing body, as appropriate, shall conclude a report regarding the implementation of the integrity plan, which should be published on its webpage and sent to the institution which has performed the institutional integrity assessment.

(7) Within 60 days since the receipt of the institutional integrity assessment report, the public entity or the self-governing body, as appropriate, shall examine the materials confirming the negative result of the professional integrity test, sent under the conditions set in art.13 para.(4) and shall inform the institution which has assessed the institutional integrity about the undertaken measures and applied sanctions, providing a copy of the respective decision.

(8) To ensure confidentiality and conspiracy, the copy of records sent to the public entity or self-governing body, as appropriate, for confirming the negative results of the professional integrity test, may present the image and the voice of other persons than the tested public agent, the images of cars, places, and other backgrounds, as well as the sounds of recorded circumstances in such a way so as not to be recognized.

(81) While reviewing the materials provided under para. (8), the public entity or the self-governing body, as appropriate, shall ensure the access of the tested public agent or his/her representative, as appropriate, and of the specialized court to the materials sent by the institution which has performed the institutional integrity assessment.

(9) If the head of the public entity or a member of the respective entity's disciplinary body is in a direct kinship relation or affinity relation up to the fourth degree with the public agent subject to the professional integrity testing, the report about the negative result of the professional integrity test shall be communicated to the head of the hierarchically superior entity, who will take a decision on applying disciplinary sanctions to the tested public agent.

(10) After receiving the report on institutional integrity assessment, when taking the decision on promoting the public agents subject to the professional integrity testing, the public entity or the self-governing body, as appropriate, shall take into consideration the test results”.

23. Article 15 shall have the following wording:

“Article 15. Repeated institutional integrity assessment. Consequences of integrity plan failure

(1) Upon receipt of the report on implementation of the integrity plan, the institution which has performed the institutional integrity assessment shall assess the progress achieved in enhancing the institutional integrity environment of the public entity, verifying if the institutional integrity plan was successfully implemented or failed. For the purpose of creating and continuously maintaining the institutional integrity environment, the public entities shall be subject to periodical institutional integrity repeated assessments, carried out in line with the provisions set in Chapter II; the number of such repeated assessment is unlimited.

(2) The implementation of the integrity plan shall be deemed as successful in the following cases:

a) if all or majority of measures included in the plan were fulfilled, with some exceptions, due to reasons outside the control of the public entity;

b) if the results of the repeated institutional integrity assessment of the public entity reveals the non-involvement of the public agents in corruption acts, less involvement of public agents in such acts as compared to the results of the previous assessment, but in any case does not denote a higher involvement than the level set in para. (3) letter c).

(3) The integrity plan shall be deemed failed in the following cases:

a) if the plan is not adopted within the set deadlines;

b) if the measures included in the plan are not fulfilled due to reasons under the control of the public entity;

c) if at least one third or more public agents are involved in corruption acts and this is revealed during the repeated institutional integrity assessment.

(4) If the integrity plan implementation failed, the institution which assessed the institutional integrity shall ask the hierarchically superior public entity to apply disciplinary sanctions, including the sanction of dismissing the head of the public entity. The limitation period for applying the disciplinary liability shall start since the receipt of the request.

(5) The refuse of the hierarchically superior public entity to apply the disciplinary sanction requested by the institution assessing the institution integrity under the conditions set in para. (4) may be challenged in the specialized administrative dispute court, observing the prior procedure. The challenge of the refuse in this case shall suspend the limitation period for the disciplinary liability.

(6) If the integrity plan adopted by the self-governing body of the public entity subject to repeated institutional integrity assessment failed, the full versions of the initial and repeated, as appropriate, institutional integrity assessment reports shall be deemed as being of public interest and shall be published on the webpage of the institution assessing the institutional integrity”.

24. In article 16:

para. (1) by the end shall be completed with the following sentence:

“The limitation period for applying the disciplinary liability shall start since the receipt of the institutional integrity assessment report.”

para. (2) shall be abrogated;

in para. (3) the words “the notification regarding” shall be replaced by the words “the institutional integrity assessment report containing”, and by the end shall be completed with the following phrase: “or transferred based on the transfer request”.

in para. (6) the second sentence will have the following wording: “The purpose of the integrity record, as well as the situations when the employer request the information from such records, shall be provided in the Regulation on keeping and using the respective record, which is approved by the Government”.

shall be completed with para. (7) as follows:

“(7) The information about the negative results of the professional integrity test, assessed according to the provisions of art.121 shall be kept in the public agents’ professional integrity records for:

a) 5 years – regarding the violation of art.6 para.(2) letter a);

b) 1 year – regarding the violation of art.6 para.(2) letters b) and c).”

25. Article 17 shall have the following wording:

“Article 17. Challenge of applied disciplinary sanctions

(1) The disciplinary sanction applied further to the negative result of the professional integrity test may be challenged by the tested public agent in the administrative dispute court, as provided by the legislation.

(2) The disciplinary sanction applied to a judge further to the negative result of the professional integrity test may be challenged according to the provisions set in the Law No.178 dated July 25, 2014 on Judges’ Disciplinary Liability.

(3) The challenge of the disciplinary sanctions set forth in para. (1) and (2) shall suspend the limitation period of the disciplinary liability.

(4) The competence to examine the challenges submitted according to this article in the administrative offence regime belongs to the specialized court. The judge who has endorsed the decision to initiate the test and who has verified the test results cannot participate in examining the challenge”.

26. In article 18:

para. (1) the words “ , be kept” shall be completed with the words “observing the rules for personal data protection, as set forth in the Law No. 133 dated 08.07.2011 on Personal Data Protection”;

shall be completed with para. (11) as follows:

“(11) If the recordings set forth in para.(1) contain state secret information, the keeping and management of such materials shall be performed in line with the legislation on state secret protection”;

para. (2) shall have the following wording:

“(2) After the expiry of the deadlines established in para. (1), the original copy of the audio/video recordings performed during the professional integrity testing shall be destroyed by the institution which has performed the institutional integrity assessment, and the copies made under the conditions set in art. 14 para. (8) shall be destroyed by the public entities or the self-governing bodies, as appropriate, which have received them”;

shall be completed with para. (3) as follows:

“(3) In case of violation of the regime set for keeping, accessing, and destroying the audio/video recordings performed during the professional integrity testing, the liability for violation of provisions set forth in the Law No. 133 dated 08.07.2011 on Personal Data Protection or the Law No. 245 dated 27.11.2008 on State Secrete, as appropriate, shall arise”.

27. Title of Chapter IV shall have the following wording: “Control and Financing of Institutional Integrity Assessment”.

28. In article 19:

in the title of the article, the words “professional integrity testing” shall be replaced by the words “institutional integrity assessment”;

para. (1) the words “professional integrity testing” shall be replaced by the words “institutional integrity assessment”;

para. (2):

the phrase “January 30” shall be replaced by the phrase “March 30”;

the words “report” shall be completed with the word “public”;

the words “professional integrity testing” shall be replaced by the words “institutional integrity assessment”

letters a)-b1) shall have the following content:

“a) the number of public entities subject to the institutional integrity assessment;

b) the number of performed professional integrity tests and their results;

b1) the number of integrity plans adopted and implemented with success or failed;”

in para. (3) the words “activity of” shall be completed with the words “institutional integrity assessment of public entities and”.

29. Shall be completed with article 191 as follows:

“Article 191. Judicial control over the professional integrity testing activity

(1) The endorsement of the professional integrity testing activity, the verification over observance of the endorsement conditions for assessing the results of the professional integrity tests, examining the challenges related to professional integrity test performance and disciplinary sanctions as a result of such testing negative results, as well as the refusal to apply disciplinary sanctions as a result of failed integrity plan shall be under the judicial control, being ensured by the specialized courts.

(2) The selection and appointment of judges from the specialized courts shall be carried out by the Superior Council of Magistrates based on the Regulation approved by this Council after consultation with the National Anticorruption Center. The following rules shall be observed during the selection and appointment of judges:

a) the selected judges should have unimpaired reputation;

b) the judges should be appointed in the courts of different jurisdictions, including the level of the courts of appeal.

(3) The list of judges appointed in line with para. (2) shall be public and shall be posted on the official webpage of the Superior Council of Magistrates”.

30. In article 20:

in the title the words “measures to organize” shall be completed with the words “the institutional integrity assessment and”;

before the words “professional integrity testing” shall be completed by the words “institutional integrity assessment and”.

31. The Annex of the Law shall be abrogated.

Art. XXIX. – The Law No. 52 dated April 3, 2014 on People’s Advocate (Ombudsman) (Official Gazette of the Republic of Moldova, 2014, No.110-114, art.278), shall be completed as follows:

1. Article 6 para. (1) shall be completed with letter g) as follows:

“g) has no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para.(2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity Assessment”.

2. Article 35 para. (2) shall be completed by the end with the phrase: “ , and has no entries over the last 5 years in the Professional Integrity Record regarding application of disciplinary sanctions for violating the obligations set forth in art.6 para.(2) letter a) of the Law No. 325 dated December 23, 2013 on Institutional Integrity”.

Art. XXX. – The Law No. 178 dated 25.07.2014 on Judges’ Disciplinary Liability (Official Gazette of the Republic of Moldova, 2014, No. 238-246, art.557), shall be completed as follows:

1. Article 4 para. (1) shall be completed with letters m1) as follows:

“m1) non-observance of the provisions set in art.6 para. (2) of the Law No. 325 dated September 23, 2013 on Institutional Integrity Assessment”.

2. Art.19 para. (1) letter d) by the end shall be completed with the phrase: “as well in case when receiving the report on institutional integrity assessment results, concluded by the National Anticorruption Center.”

Art. XXXI. – Final and Transitory Provisions

(1) The present law shall enter into force within three months since the date of its publication.

(2) Within a deadline of 3 months since the publication of the present law, the Government:

a) shall submit to the Parliament other proposals for amending and completing the necessary legislative acts in order to implement art. 41 of the Law No. 325 dated December 23, 2013;

b) shall make its normative acts compliant to the present law;

c) shall abrogate the Government Decision No. 906 dated 28.07.2008 approving the Methodology for assessing corruption risks in public authorities and institutions.

(3) The National Anticorruption Center, within 3 months since the publication of the present law, shall adjust its departmental acts, in order to enforce the provisions set forth in the present law.

President of the Parliament

6.2. Draft Law on Institutional Integrity Assessment

[The following Draft Law “On Institutional Integrity Assessment” in the consolidated version as amended by the Draft Law “On Amending and Completing Certain Legislative Acts” is an English translation as provided by the Moldovan authorities.]

L A W

on Institutional Integrity Assessment

No. 325 dated December 23, 2013

Official Gazette No.35-41/73 dated 14.02.2014

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Pursuant to Art. 72 para.(3) letter r) of the,

The Parliament adopts this organic law.

Chapter I

GENERAL PROVISIONS

Article 1. Scope

This law sets forth the purpose, principles, means, methods, procedures, and legal effects of the institutional integrity assessment within public entities.

Article 2. Purpose of the institutional integrity assessment

The institutional integrity assessment is performed to:

a) increase the accountability of heads of public entities and self-governing bodies for developing, maintaining, and enhancing the professional integrity environment within public entities;

c) identify, assess, and remove corruption risks within public entities;

Note: Letters b) and d) art.2 are declared to be unconstitutional, according to the [Decision of the Constitutional Court No.7 dated 16.04.2015](#), in force since 16.04.2015.

e) secure professional integrity of public agents, to prevent and combat corruption within public entities;

f) increase the denunciation of corruption acts by public agents.

Article 3. Principles

The institutional integrity assessment process shall be performed under the mandatory observance of the following principles:

a) legality;

b) observance of the fundamental human rights and freedoms, of human and professional dignity;

b¹) fair balance between the fundamental rights and freedoms of the citizens affected by public agents' corruption acts, on one hand, and the fundamental rights and freedoms of the public agents, on the other hand;

c) unbiased, equitable, and non-discriminatory treatment of the public agents subject to testing;

d) presumption of good faith of the assessment subjects;

e) presumption of institutional integrity of the public entities;

f) transparency of institutional integrity assessment results, with exceptions provided in the Law No. 245 dated 27.11.2008 on State Secret.

Article 4. Concepts

For the purpose hereof, the following concepts shall have the following meanings:

public agent – a person employed within a public entity and exercising a public function, a special status public function, a public dignity function, a person employed in the office of the person exercising a public dignity function or providing services of public interest;

public entity – legal entity with the status of:

public authority, central authority, specialized central public authority, local public authority, as well as the organizational structure under such authorities or from their area of competence;

state, autonomous, independent, self-governing and/or regulatory authority, institution, body, organization, office or agency;

Constitutional Court, court, Prosecutor's Office

state enterprise, with state majority capital or municipal enterprise.

services of public interest – performing activities for servicing the population in the public area, within institutions, enterprises, organizations, and other state structures, with state majority capital, municipal or local ones;

institutional integrity – professional integrity of all public agents from public entities, which is fostered, controlled, and enhanced by the heads of entities, as well as zero tolerance to public agents' corruption acts, by sanctioning their missing professional integrity;

professional integrity – performance of all professional activities by the public agent in an ethical manner, free of inappropriate influence and corruption acts, observing the public interest, supremacy of the Constitution of the Republic of Moldova and of the law;

institutional integrity assessment – the process of identifying corruption risks within public entities, assisted by analytical and practical methods (professional integrity testing), describing the factors determining the identified risks and their consequences, and providing recommendations for mitigating such risks, performed in compliance with the provisions set forth in this law;

corruption risk – possible even of corruption act occurrence, affecting the achievement of public entity's objectives;

risk factor – a circumstance of any type, allowing, encouraging, and provoking the occurrence of corruption acts within the public entities or perpetuating them;

professional integrity test – the creation and application by the tester of certain virtual, simulated situations, similar to those in the work activity, materialized through dissimulated operations, conditioned on the activity and behavior of the tested public agent, in order to passively monitor and establish the reaction and conduct of the tested public agent, hence determining the level of damage to the institutional integrity environment and the corruption risks of the public entity within the institutional integrity assessment;

professional integrity testing – all the processes related to performance of the professional integrity test, a stage of the institutional integrity assessment;

tester – person from the National Anticorruption Center and Security and Information Service empowered by this law and by special laws with duties and competences to perform the professional integrity tests;

integrity incident – corruption act occurred in real circumstances, any other deed similar to the corruption act, occurred during a professional integrity test;

corruption acts – corruption deeds, corruption related acts and corruption behavior acts, specified in the Law No. 90 dated June 13, 2008 on Preventing and Combating Corruption;

integrity plan – internal plan adopted under the conditions of this law by the head of the public entity and/or self-governing body, as a result of the institutional integrity assessment, through which the institutional integrity environment may be developed and/or enhanced during the implementation period;

inappropriate influence – interference in the public agent's professional activity from third parties manifested through pressure, threats or requests in order to determine the respective public agent to perform his/her professional activity in a certain way, whenever the given interference is illegal and is not accompanied by promising, offering or giving, personally or through an intermediary, goods, services, privileges or advantages in any form, which are not due to him/her (does not meet the elements of an offense).

Note: In article 4 the text “justified risk – risk without which the socially useful purpose to objectively set the public agent's conduct within the professional integrity test cannot be reached, and the professional integrity tester who risks took measures to prevent damages of the interests protected by law” is declared unconstitutional, according to the [Decision of the Constitutional Court No.7 dated 16.04.2015](#), in force since 16.04.2015.

Article 4¹. Institutional integrity environment

(1) The public entities shall perform their activity in the public interest, ensuring the institutional integrity environment. The public agents shall exercise their duties with professional integrity.

(2) The institutional integrity environment shall be secured through enforcement of national and sector anticorruption policies, as well as of specific professional integrity requirements for the activity of the public agents within public entities. The following shall be deemed as national and sector anticorruption policies securing the institutional integrity environment:

- a) employment and promotion of public agents on merit and professional integrity basis;
- b) regime of incompatibilities, restrictions in hierarchy and limitations of publicity;
- c) regime of property and personal interests' declaration;
- d) regime of conflicts of interest;
- e) avoidance of favoritism;
- f) regime of gifts;

- g) denunciation and treatment of inappropriate influences;
 - h) denunciation of corruption acts and protection of integrity denunciators;
 - i) non-admission of corruption acts;
 - j) transparency in decision-making process;
 - k) access to information of public interest;
 - l) transparent and responsible management of public patrimony, reimbursable and non-reimbursable finances;
 - m) professional ethics and deontology;
 - n) regime of restrictions and limitations related to termination of the mandate, work relations, duty relations, or migration to the private sector of the public agents (revolving doors).
- (3) The provisions of para. (2) shall be applied appropriately for different categories of public agents, with the derogations provided by the special laws regulating the respective activity.
- (4) The specific requirements of professional integrity for the activity of public agents from public entities shall be adopted through departmental acts of the public entities, which cannot provide for other derogations than those set forth in para. (3) or less rigorous behavioral standards for the heads of public entities and public agents than those provided by the national and sector anticorruption policies.
- (5) The public entities shall determine the institutional policy for sanctioning any professional integrity lacking behavior of public agents, in compliance with the provisions of the legislation in force, aiming to discourage other public agents from such behavior in future.

Article 5. Subjects of institutional integrity assessment

- (1) Public entities, self-governing bodies, public agents, the National Anticorruption Center, and the Security and Information Service shall be subjects of the institutional integrity assessment.
- (2) The institutional integrity assessment shall be applied for public entities, providing the possibility to apply the professional integrity tests for public agents.
- (3) The institutional integrity assessment and the professional integrity tests shall be performed by the National Anticorruption Center and Security and Information Service, involving testers.

Article 6. Rights and obligations of public agents

- (1) Public agents shall be entitled:
- a) to be informed about the specific professional integrity requirements for the public agents within public entities, as well as about the disciplinary sanctions which may be applied for nonobservance of such requirements, in compliance with the provisions set in art. 4¹;
 - b) to be informed about the integrity plan of the public entity, adopted after announcing the institutional integrity assessment results;

- c) to be informed about the integrity tests performed in relation to them;
- d) to challenge in the court the application of the integrity test performed in relation to them.

(2) Public agents shall have the following obligations:

- a) not to admit corruption acts;
- b) to denounce immediately to the competent bodies any attempt of being involved in the actions provided under letter a);
- c) to know and to observe the duties they have to perform according to the national and sector anticorruption policies, provided under art. 4¹;
- d) to know and to observe the specific professional integrity requirements for the activity of public agents within public entities, about which they were informed;
- e) to perform the measures set forth in the integrity plan, adopted by the public entity, or, as appropriate, by the self-governing body, as a result of the institutional integrity assessment.

Article 7. Rights and obligations of public entities and self-governing bodies

(1) Public entities and self-governing bodies shall be entitled:

- a) to be informed, within the deadlines provided herein, about the results of the institutional integrity assessment and application of professional integrity tests in relation to the public agents for whose ethics and discipline they are responsible for.
- b) to deem the positive result of the professional integrity test as an additional reason to promote the public agent, without disclosing such reason.

(2) Public entities and self-governing bodies shall have the following obligations:

- a) to foster the institutional integrity environment, as it is set forth in Article 4¹.
 - a¹) to inform the public agents about the specific professional integrity requirements for the activity of public agents within public entities, as well as about the disciplinary sanctions which may be applied for non-observances of such requirements, in compliance with the provisions set in art. 4¹;
 - a²) to inform the public agents, with a signature-based confirmation, about the possibility to be subject to the professional integrity test. Such information shall be provided upon the appointment of the newly-employed public agents; and for the public agents employed upon the coming into force of this law – within the deadlines set in the final and transitory provisions. The non-information of the public agent by the public entity or the non-signature of the information confirmation by the public agent based on this law shall not be a barrier to perform the professional integrity tests in relation to such a public agent, to undertake the institutional integrity assessment of the public entity, as well as to apply the disciplinary sanctions in compliance with the legislation in force;
 - a³) to adopt, secure, and report the implementation of the integrity plans within the deadlines set in this law;
 - a⁴) to inform the public agents about the performed professional integrity tests concerning them;

a⁵) to take the necessary measures concerning the public agents who underwent the testing, based on the qualification of the behavior they proved to have during the test and the evidences confirming it;

b) to ensure the access of the institution assessing the institutional integrity to all the registers and record forms fostering the institutional integrity environment provided in art.4¹, including in electronic format, as well as to any other necessary information under the conditions and limits set in letter e) Article 6 of the Law No. 1104 dated June 6, 2002 on National Anticorruption Center and letter j) para. (1) Article 9 of the Law No. 619 dated October 31, 1995 on State Security Bodies.

c) to allow withdrawal of the documents submitted to the public entity during the professional integrity test, of the audio-video recordings performed by the public entity during the professional integrity test, and to undertake other measures necessary to secure the confidentiality of testers, codifying documents, special means and techniques used during the professional integrity test.

Article 8. Rights and obligations of the institutions assessing the institutional integrity

(1) The institutions assessing the institutional integrity shall be entitled:

a) to determine, under the conditions of this law, the areas for performing the institutional integrity assessment, assessed public entities, categories of public agents from the public entities subject to random professional integrity tests, and frequency of assessments;

b) to organize and benefit from special trainings on methods and means applied within the professional integrity testing;

c) to use within the professional integrity testing documents encoding the identity of persons, structures, organizations, premises, and transportation means, as well as the identity of the persons set in art.12 para. (2);

d) to perform repeatedly an institutional integrity assessment of a previously assessed public entity in order to verify the progress for enhancing the institutional integrity as a result of the integrity plan adoption and implementation;

e) to suggest the hierarchically superior public entities or self-governing bodies to dismiss the heads of the public entities subject to repeated assessment provided in letter d), if the integrity plan failed;

f) to challenge the decisions of the public entities' heads in relation to the reports on institutional integrity assessment and the refuse of the hierarchically superior public entities to proceed with the proposal provided in letter e) in the administrative dispute court, observing the prior procedures.

(2) The institutions assessing the institutional integrity shall have the following obligations:

a) to ensure confidentiality of testers' activities, codifying documents, and special technical means used during the testing, except for the cases provided in this law;

a¹) to observe the regime of personal data protection, under the conditions set in the Law No. 133 dated July 8, 2011 on Personal Data Protection, except for the cases provided in this law;

b) to send to the heads of the public entities or, self-governing body, as appropriate, the full version of the report on institutional integrity assessment, according to the provisions set in art.13 para.(2¹) letter a);

b¹) to publically release the depersonalized version of the report on institutional integrity assessment results, according to the provisions set in art.13 para. (2¹) letter b), simultaneously with sending the full version to the public entity or to the self-governing body, as appropriate;

b²) to publically release the full version of the report on institutional integrity assessment results, according to the provisions set in art.13 para. (2¹) letter a), if the assessed public entity has no hierarchically superior entity, as well as if the integrity plan adopted by the self-governing body failed;

c) to undertake all the measures to prevent the eventual negative consequences for third parties in relation to the performance of the professional integrity test;

d) to ensure the destruction of the audio/video recordings performed during the integrity test within the deadlines set in art. 18 para. (1);

e) to adopt and publish the methodology for identification of corruption risks and analysis of risk factors, within the institutional integrity assessment.

(3) The obligations of the institutions assessing the institutional integrity shall duly cover the testers and the persons analyzing the corruption risks within public entities.

Article 8¹. Testers' integrity

(1) The institutions assessing the institutional integrity shall ensure testers' integrity, adopting internal policies for this purpose, in compliance with the provisions set in this article.

(2) The candidates for tester's position shall be subject to a prior special control, mandatory polygraph testing, and psychological tests related to the integrity of their professional past, in order to establish existing inappropriate motivations to perform the activity of professional integrity testing, and other relevant aspects stated in the internal policies.

(3) To ensure objectiveness and to conspire the professional integrity testing activities, the testers shall be subject to periodical polygraph verifications, psychological verifications, lifestyle monitoring, and professional integrity tests, according to the competences set in art.5, as well as according to the extended obligation to state the potential personal interests and conflicts of interest, in relation to the general legal regime applicable to public agents.

(4) The extended obligation to state the potential personal interests and conflicts of interest implies the obligation for the selected testers to submit a statement, under their own responsibility, regarding their previous jobs, kinship, friendship or hostility relations from their private lives with any public agents, whose testing falls under the competence of the institution they are a part of. The submitted statement shall be updated by the tester once biannually, as well as whenever the tester finds out that he/she is to perform a professional integrity testing of a public agent, the private life relations with whom were not included in the submitted statement and/or not updated previously. The respective statement shall be submitted to the testing activity coordinator, according to the template provided in the internal policies set forth in para. (1).

(5) If during the performance of the professional integrity test, the tester finds out that he/she knows in private settings the public agent subject to the respective test, and the tester did not know that the respective public agent works in the respective public entity, he/she shall undertake, if possible, actions to avoid the professional integrity testing of the respective public agent and to stop such testing, in order not to admit the testing activities' uncovering.

(6) The result of the professional integrity test performed in relation to a public agent with violation of provisions set in para. (4) and para. (5) shall be assessed by the specialized court as inconclusive, under the conditions set in art. 12¹.

(7) The tester using the materials accumulated during the performed professional integrity test for other reasons than those provided in this law shall be criminally or administratively liable for abuse of office, excess of duties, and other offences, as appropriate.

(8) The testers' integrity obligations provided in this article shall be applied accordingly to the testing activity coordinator as well.

Article 9. Guarantees and responsibilities

(1) In case the public agent's behavior is assessed as a negative result of the professional integrity test, the tested public agents shall be subject only to disciplinary liability, depending on the severity of the established deviations and in compliance with the legislation regulating the activity of the respective public entities, observing the provisions set in art. 16.

(2) The results and materials of the professional integrity test shall not be used as means of evidence in a criminal or minor offence trial against the tested public agent.

(3) The methods and means to test and set professional integrity tests shall not represent special investigation activities as provided by the [Law No. 59 dated March 29, 2012](#) on Special Investigation Activity.

(4) The use of the professional integrity test materials in a civil trial shall be admitted as provided by the civil procedural legislation. The results of the professional integrity testing and the materials of the professional integrity test may be used as evidence in a civil trial if they are pertinent, admissible, veridical, observing the public interest, human rights and freedoms, and the declassification conditions.

Note: Paragraph (5) of art. 9 is declared unconstitutional according to the [7 dated 16.04.2015](#), in force since 16.04.2015

(6) By derogation from the provisions set in para. (2) of this article, if during the professional integrity test performance, the tester finds out real illegal activities carried out by tested public agents or third parties, which are not generated by application of the professional integrity testing plan, the institution performing the institutional integrity assessment shall notify the competent body for measures provided by the legislation in the area to be taken.

(7) The persons from the institution assessing the institutional integrity shall be liable for disclosing the confidential data provided in art.7 para. (2) letter b), the information related to private life beyond the professional activities of the public agent and for publishing the personal data in contradiction to the provisions set in art.8 para. (2) letters a) and a¹) which became available to them during the performance of the professional integrity tests.

Chapter II

INSTITUTIONAL INTEGRITY ASSESSMENT PROCEDURE

Article 10. Institutional integrity assessment initiation

The institutional integrity assessment shall be initiated by:

- a) the National Anticorruption Center – regarding all the public entities under the jurisdiction of this law, except for the Security and Information Service;
- b) the Security and Information Service – regarding the National Anticorruption Center;
- c) the internal security subdivision of the Security and Information Service – regarding the Security and Information Service. In this case, the internal security subdivision of the Security and Information Service has the possibility to go through all the assessment stages provided in art.10¹ or only the stage of professional integrity testing of the public agents from the Security and Information Service.

Note: Paragraphs (2)-(3) of art. 10 are declared unconstitutional, according to the [Constitutional Court Decision No. 7 dated 16.04.2015](#), in force since 16.04.2015

Article 10¹. Institutional integrity assessment stages

(1) The institutional integrity assessment shall be performed through the following stages:

Stage 1. Identification of corruption risks within the public entity;

Stage 2. Testing the professional integrity of public agents;

Stage 3. Description of corruption risks and analysis of factors generating such risks;

Stage 4. Recommendations for improving the institutional integrity environment.

(2) Stage 1 shall be carried out based on the examination of the integrity incidents admitted by the public agents from the public entities; information sent by the citizens, materials from mass-media; analytical sources (reports, studies, surveys, indicators, etc.); as well as of the modalities affecting the human rights through the identified corruption risks.

(3) Stage 2 is an optional stage of the professional integrity test. The tester shall be responsible for performing this stage. The public agents to be subject to testing shall be selected on random basis, depending on the corruption risks identified in line with para. (2). The motivated decision to initiate the professional integrity testing of the public agents within a public entity shall be taken by the institution assessing the institutional integrity, with the endorsement of the specialized court, under the conditions set in art. 10², without prior information of the given public entity management or of the self-governing body, as appropriate.

(4) Stage 3 shall be carried out by describing the corruption risks identified during the stage 1 and, where appropriate, confirmed during the professional integrity testing in stage 2 of the assessment,

as well as by analyzing the risk factors which increase the likelihood of such risks' materialization. The analysis shall be carried out according to the following risk factors' types:

- a) external factors – risk factors which are outside the control of the public entity;
- b) internal factors – organizational, control, and sanctioning risk factors which are under control of the public entity, which are the result of their action or lack of action;
- c) operational factors – factors emerging during the activity of the public entity;
- d) individual factors – factors which may motivate a certain public agent to admit corruption acts and to act contrary to the institutional integrity environment.

(5) Stage 4 implies setting some minimum requirements and meeting these requirements would allow the public entity to reduce the corruption acts among the public agents.

(6) If the institutional integrity assessment is performed without stage 2 of professional integrity testing, stages 3 and 4 shall follow the fulfilment of stage 1.

Article 10². Endorsement of the professional integrity test

(1) The decision to initiate the professional integrity test within the institutional integrity assessment shall be taken by the institution assessing the institutional integrity and endorsed by the specialized court. The decision to initiate the professional integrity test and the endorsement shall be confidential until the submission of the institutional integrity assessment report.

(2) The motivated decision to initiate the professional integrity test shall indicate:

- a) the reasons for initiating the professional integrity test within the public entity;
- b) the corruption risks identified within the public entity subject to assessment;
- c) the objectives of the professional integrity testing of the public agents within the entity;
- d) the criteria for selecting the public agents in the public entity to be subject to the professional integrity testing;
- e) the possibility of using the audio/video recording means, communication means, and other technical means for obtaining information in a concealed way, as well as the possibility to offer, promise or send goods, services, provision of privileges and advantages, in order to capture the public agents' behavioral acts and not to disclose the testers' activity.

Article 11. Professional integrity test planning and fulfilment

(3) The professional integrity test plan is a confidential document, which is approved by the coordinator of the professional integrity testing activity, based on the motivated decision endorsed by the court according to art. 10²; it shall contain the following information:

- a) the initiator of the test and the motivated decision to initiate the test;
- a¹) testing objectives;

- b) testing subjects;
- c) envisaged dissimulated operations;
- d) place, duration, participations, and logistical assurance of the testing;
- e) simulated virtual situations, behavior hypotheses and action options of the professional integrity tester and the tested public agent;
- g) other information relevant for performing the test.

Note: Paragraphs (1), (2) and (4) of art. 11 are declared unconstitutional, according to the Constitutional Court Decision No. 7 dated 16.04.2015, in force since 16.04.2015

(5) During the professional integrity testing, the testers shall undertake the necessary measures to support the simulated virtual situations, planned in line with para.(3) letter e), hence ensuring the fulfilment of the plan's provisions. Upon the request of the institution assessing the institutional integrity, other state institutions shall provide free-of-charge assistance to carry out the measures for supporting the simulated virtual situations.

(6) In certain contingencies, the testers may deviate from the approved plan, to the extent in which their actions contribute to the achievement of the testing objectives and do not lead to chancing the motivated decision endorsement conditions, set forth in art.10².

(7) If the contingencies emerged during the enforcement of the plan lead to identification of new corruption risks unforeseen in the motivated decision, the motivated decision completed with the new identified risks shall be endorsed by the specialized court within 3 working days since the occurrence of the respective contingencies. If the judge refuses to endorse, the materials accumulated by the tester in the given contingencies shall be destroyed, except for the cases when these materials are necessary for the purpose of art. 9 para. (6).

(8) If needed, when performing the professional integrity testing, the testers shall collaborate with the representatives of the public entities in which the tested public agents work, under the conditions of this law and of the special rules regulating the cooperation in the area.

Article 12. Means and methods to test and set professional integrity tests

(1) The testers shall perform their activity on confidential basis. They may use for this purpose the means and methods set forth in art.8 para. (1) letter c).

(2) In exceptional cases, other persons may participate in performing the professional integrity testing, with the prior approval and guarantees that they will not disclose the performed activity.

(2¹) The professional integrity tests shall be performed observing the fundamental rights and freedoms of the public agent. The possibility to restrict such rights and freedoms during the professional integrity testing shall be provided in the motivated decision to initiate the professional integrity test, endorsed by the judge under the conditions set in art. 10¹ para. (3).

(2²) During the professional integrity testing of judges, the institutions assessing the institutional integrity and the testers shall observe the guarantees of judges' independency, being prohibited to interfere in justice application in real cases trialed in courts.

Note: Paragraphs (3)-(6) of art. 12 are declared unconstitutional, according to the [Constitutional Court Decision No. 7 dated 16.04.2015](#), in force since 16.04.2015

(7) To capture the behavior of the public agent under the professional integrity testing, there shall be used means for audio/video recording, communication means, other technical means for obtaining information in a concealed way, held by the institutions assessing the institutional integrity or from other sources, and the possibility to send the goods, to provide services, to grant privileges and advantages shall be provided only if it is reflected in the motivated decision to initiate the professional integrity testing, endorsed by the judge under the conditions set in art. 10².

Article 12¹. Assessing the result of the professional integrity test

(1) The situation when the public agent proves to have professional integrity, observing the obligations set forth in art. (6) para. (2) letters a)-c), shall be considered as positive result of the professional integrity test; the situation when the obligations are not observed shall be considered as negative results, and the situation when the behavior of the public agent can be classified neither as positive result nor as negative result, as well as the situation when the integrity test was performed with violations of the provisions set in this law shall be considered as inconclusive.

(2) The materials of the professional integrity tests shall be verified by the judge from the specialized court which has endorsed the decision to initiate the testing. While verifying, the judge shall review how the tester has observed the motivated decision to initiate the test, shall confirm or change the proposal of the institution assessing the institutional integrity regarding the assessment of the tested public agent's behavior, and shall determine the test results in compliance with the provisions set forth in para. (1).

(3) The judge shall decide upon the assessment of the public agents' testing results as positive, negative and inconclusive through a decision. At the same time, the judge shall decide within the same decision or another decision for the tested public agents to return / voluntarily recover the assets, according to the situation set forth in art.16 para.(5).

(4) Upon the request of the institution assessing the institutional integrity, the judge shall solve via a decision any other situation emerged during the professional integrity testing, in order to secure the observance of fundamental human rights and freedoms, not to disclose the identity of the testers and to conspire the testing activity.

Article 13. Report on institutional integrity assessment results and evidence-bearing materials

(1) After passing through all the stages set forth in art. 10¹, the institution assessing the institutional integrity shall compile a report on assessment results, which will cover the following information:

- a) the initiator of the institutional integrity assessment and the assessment stages;
- b) the corruption risks affecting the activity of the public entity;
- c) the findings regarding the integrity environment in the public entity, in line with the provisions set in art. 4¹;
- d) the integrity incidents admitted by the public agents;

- e) the results of the professional integrity testing of public agents, describing the performed testing activities according to the test plan, as well as the behavior and actions of the public agents during the testing;
- f) how the human fundamental rights and freedoms are affected by the corruption acts in the public entity;
- g) recommendations / minimum requirements for removing the corruption risks.
- (2) The report drafted under the conditions of para. (1) shall be compiled so as not to allow the disclosure of the persons involved in performing the professional integrity test, the forces, means, sources, methods, and activity plans of the National Anticorruption Center and of the Security and Information Service, as well as other information with limited accessibility.
- (2¹) The report mentioned in para. (1) shall be concluded in two versions:
- a) full version, containing data about the tested public agents' identity;
- b) depersonalized version, without including data about the identity of tested public agents, such as name, surname, as well as other data leading to public agents' identification.
- (3) The original audio/video recordings performed during the integrity testing shall be annexed to the full version of the report concluded under the conditions set in para. (1) and shall be kept, on mandatory basis, together with the full version of the report in the institution which has carried out the institutional integrity assessment.
- (4) The full version of the report on institutional integrity assessment results shall be submitted to the head of the public entity or to the self-governing body, as appropriate, within three working days since the moment the report is finalized. At the same time, the copies made under the conditions set in art.14 para.(8) of the original audio/video recordings and other materials confirming the negative results of the professional integrity test shall be also submitted, with the note about their confidential nature and the liability for disclosing other persons than those mentioned in art. 14 para. (8¹).
- (5) The depersonalized version of the report on institutional integrity assessment results shall be released publically on the webpage of the institution which has performed the institutional integrity assessment, alongside the submission of the full version of the report, under the conditions set in para. (4).
- (6) By derogation from the provisions set in para. (5), the full version of the report on institutional integrity assessment results shall be published on the webpage of the institution which had assessed the institutional integrity of the public entities which do not have a hierarchically superior public entity, and for whose public agents the legislation does not provide the possibility of being held disciplinary liable, as well as in the situations set forth in art. 15 para. (6).

Chapter III

CONSEQUENCES OF THE INSTITUTIONAL INTEGRITY ASSESSMENT AND PROFESSIONAL INTEGRITY TEST

Article 14. Public entity's actions after receiving the institutional integrity assessment report

(1) The public entity or the self-governing body, as appropriate, shall review the institutional integrity assessment report immediately after submission.

(2) If the institutional integrity assessment report determines corruption risks in the public entity, the public entity or the self-governing body, as appropriate, shall adopt an integrity plan within one month since the day the report was submitted.

(3) The integrity plan shall be implemented within two months since the day it was adopted, ensuring at least the fulfilment of the recommendations / minimum requirements formulated in the institutional integrity assessment report. The integrity plan shall cover:

- a) corruption risks (according to the report);
- b) actions for reducing / excluding the risks;
- c) deadlines;
- d) indicators;
- e) responsible people.

(4) For the corruption risks described in the institutional integrity assessment report, the occurrence of which is determined by external risk factors, the public entity or the self-governing body, as appropriate, shall include indirect actions preparing the mitigation of such risks in the integrity plan.

(5) During the development of the integrity plan, the public entity or the self-governing body, as appropriate may organize consultations with the civil society. The institution which has assessed the institutional integrity shall provide, upon request, methodological support for the given process. The responsibility for adopting and implementing the integrity plan belongs exclusively to the public entity or self-governing body, as appropriate.

(6) Upon the expiration of the deadline set in para. (3), the public entity or the self-governing body, as appropriate, shall conclude a report regarding the implementation of the integrity plan, which should be published on its webpage and sent to the institution which has performed the institutional integrity assessment.

(7) Within 60 days since the receipt of the institutional integrity assessment report, the public entity or the self-governing body, as appropriate, shall examine the materials confirming the negative result of the professional integrity test, sent under the conditions set in art.13 para.(4) and shall inform the institution which has assessed the institutional integrity about the undertaken measures and applied sanctions, providing a copy of the respective decision.

(8) To ensure confidentiality and conspiracy, the copy of records sent to the public entity or self-governing body, as appropriate, for confirming the negative results of the professional integrity test, may present the image and the voice of other persons than the tested public agent, the images of cars, places, and other backgrounds, as well as the sounds of recorded circumstances in such a way so as not to be recognized.

(8¹) While reviewing the materials provided under para. (8), the public entity or the self-governing body, as appropriate, shall ensure the access of the tested public agent or his/her representative, as appropriate, and of the specialized court to the materials sent by the institution which has performed the institutional integrity assessment.

(9) If the head of the public entity or a member of the respective entity's disciplinary body is in a direct kinship relation or affinity relation up to the fourth degree with the public agent subject to the professional integrity testing, the report about the negative result of the professional integrity test shall be communicated to the head of the hierarchically superior entity, who will take a decision on applying disciplinary sanctions to the tested public agent.

(10) After receiving the report on institutional integrity assessment, when taking the decision on promoting the public agents subject to the professional integrity testing, the public entity or the self-governing body, as appropriate, shall take into consideration the test results.

Article 15. Repeated institutional integrity assessment. Consequences of integrity plan failure

(1) Upon receipt of the report on implementation of the integrity plan, the institution which has performed the institutional integrity assessment shall assess the progress achieved in enhancing the institutional integrity environment of the public entity, verifying if the institutional integrity plan was successfully implemented or failed. For the purpose of creating and continuously maintaining the institutional integrity environment, the public entities shall be subject to periodical institutional integrity repeated assessments, carried out in line with the provisions set in Chapter II; the number of such repeated assessment is unlimited.

(2) The implementation of the integrity plan shall be deemed as successful in the following cases:

a) if all or majority of measures included in the plan were fulfilled, with some exceptions, due to reasons outside the control of the public entity;

b) if the results of the repeated institutional integrity assessment of the public entity reveals the non-involvement of the public agents in corruption acts, less involvement of public agents in such acts as compared to the results of the previous assessment, but in any case does not denote a higher involvement than the level set in para. (3) letter c).

(3) The integrity plan shall be deemed failed in the following cases:

a) if the plan is not adopted within the set deadlines;

b) if the measures included in the plan are not fulfilled due to reasons under the control of the public entity;

c) if at least one third or more public agents are involved in corruption acts and this is revealed during the repeated institutional integrity assessment.

(4) If the integrity plan implementation failed, the institution which assessed the institutional integrity shall ask the hierarchically superior public entity to apply disciplinary sanctions, including the sanction of dismissing the head of the public entity. The limitation period for applying the disciplinary liability shall start since the receipt of the request.

(5) The refuse of the hierarchically superior public entity to apply the disciplinary sanction requested by the institution assessing the institution integrity under the conditions set in para. (4) may be challenged in the specialized administrative dispute court, observing the prior procedure. The challenge of the refuse in this case shall suspend the limitation period for the disciplinary liability.

(6) If the integrity plan adopted by the self-governing body of the public entity subject to repeated institutional integrity assessment failed, the full versions of the initial and repeated, as appropriate, institutional integrity assessment reports shall be deemed as being of public interest and shall be published on the webpage of the institution assessing the institutional integrity.

Article 16. Consequences of the negative result of the professional integrity test

(1) The disciplinary sanctions as a result of the negative result of the professional integrity test, including the dismissal of the tested public agent, shall be applied according to the legislation regulating the activity of the public entity where the respective public agent works. The limitation period for applying the disciplinary liability shall start since the receipt of the institutional integrity assessment report.

Note: Para. (2) art.16 is declared unconstitutional, according to the Constitutional Court Decision No. 7 dated 16.04.2015, in force since 16.04.2015

(3) As of the date of receiving the institutional integrity assessment report containing the negative results of the professional integrity test until finishing the disciplinary procedures, the public agent may not be dismissed based on the resignation application or transferred based on the transfer request.

(4) When finalizing the disciplinary procedure, the employees of the public entity in which the tested public agent works shall be informed about the main aspects established during the testing process and about the applied sanctions.

(5) The goods received during the professional integrity testing or their equivalent value shall be returned /recovered by the tested public agent who received them.

(6) The record regarding the professional integrity of the public agents shall be kept by the National Anticorruption Center and Security and Information Service, which shall issue information upon request. The purpose of the integrity record, as well as the situations when the employer request the information from such records, shall be provided in the Regulation on keeping and using the respective record, which is approved by the Government.

(7) The information about the negative results of the professional integrity test, assessed according to the provisions of art.12¹ shall be kept in the public agents' professional integrity records for:

- a) 5 years – regarding the violation of art.6 para.(2) letter a);
- b) 1 year – regarding the violation of art.6 para.(2) letters b) and c).

Article 17. Challenge of applied disciplinary sanctions

(1) The disciplinary sanction applied further to the negative result of the professional integrity test may be challenged by the tested public agent in the administrative dispute court, as provided by the legislation.

(2) The disciplinary sanction applied to a judge further to the negative result of the professional integrity test may be challenged according to the provisions set in the [Law No.178 dated July 25, 2014](#) on Judges' Disciplinary Liability.

(3) The challenge of the disciplinary sanctions set forth in para. (1) and (2) shall suspend the limitation period of the disciplinary liability.

(4) The competence to examine the challenges submitted according to this article in the administrative offence regime belongs to the specialized court. The judge who has endorsed the decision to initiate the test and who has verified the test results cannot participate in examining the challenge.

Article 18. Keeping the recordings performed during the professional integrity tests

(1) The audio/video recordings performed during the professional integrity testing shall be kept observing the rules for personal data protection, as set forth in the Law No. 133 dated 08.07.2011 on Personal Data Protection:

a) in case of a positive result – until the information of the employees working in the public entity the public agent subject to testing is part of;

b) in case of a negative result – until the court decision remains final and irrevocable or until the expiry of the limitation period for challenging the sanction, if the institution which has performed the professional integrity testing holds no information on a possible challenge.

(1¹) If the recordings set forth in para.(1) contain state secret information, the keeping and management of such materials shall be performed in line with the legislation on state secret protection.

(2) After the expiry of the deadlines established in para. (1), the original copy of the audio/video recordings performed during the professional integrity testing shall be destroyed by the institution which has performed the institutional integrity assessment, and the copies made under the conditions set in art. 14 para. (8) shall be destroyed by the public entities or the self-governing bodies, as appropriate, which have received them.

(3) In case of violation of the regime set for keeping, accessing, and destroying the audio/video recordings performed during the professional integrity testing, the liability for violation of provisions set forth in the Law No. 133 dated 08.07.2011 on Personal Data Protection or the Law No. 245 dated 27.11.2008 on State Secrete, as appropriate, shall arise.

Chapter IV

CONTROL AND FINANCING OF INSTITUTIONAL INTEGRITY ASSESSMENTS

Article 19. Parliamentary control over the institutional integrity assessment activity

(1) The parliamentary control over the institutional integrity assessment activity shall be exercised by the National Security, Defense and Public Order Commission and the Legal, Appointments and Immunity Commission.

(2) The National Anticorruption Center and the Security and Information Service shall submit to the commission mentioned in para.(1), on annual basis, until March 30, a public report on institutional integrity assessment activities, to include:

- a) the number of public entities subject to the institutional integrity assessment;
- b) the number of performed professional integrity tests and their results;
- b¹) the number of integrity plans adopted and implemented with success or failed;
- c) the number of challenges related to applied disciplinary sanctions.

(3) The National Security, Defense and Public Order Commission and the Legal, Appointments and Immunity Commission may request, within their competence limits, any additional information on the activity of institutional integrity assessment of public entities and the professional integrity testing of public agents, if they consider that the submitted reports are incomplete.

Article 19¹. Judicial control over the professional integrity testing activity

(1) The endorsement of the professional integrity testing activity, the verification over observance of the endorsement conditions for assessing the results of the professional integrity tests, examining the challenges related to professional integrity test performance and disciplinary sanctions as a result of such testing negative results, as well as the refusal to apply disciplinary sanctions as a result of failed integrity plan shall be under the judicial control, being ensured by the specialized courts.

(2) The selection and appointment of judges from the specialized courts shall be carried out by the Superior Council of Magistrates based on the Regulation approved by this Council after consultation with the National Anticorruption Center. The following rules shall be observed during the selection and appointment of judges:

- a) the selected judges should have unimpaired reputation;
- b) the judges should be appointed in the courts of different jurisdictions, including the level of the courts of appeal.

(3) The list of judges appointed in line with para. (2) shall be public and shall be posted on the official webpage of the Superior Council of Magistrates.

Article 20. Financing the measures to organize the institutional integrity assessment and to perform the professional integrity testing

The measures to organize the institutional integrity assessment and to perform the professional integrity testing, as well as the measures for recording, keeping, and systematizing the information obtained during the tests shall be financed from the state budget within the limit of available means.

Chapter V

FINAL AND TRANSITORY PROVISIONS

Article 21. Final provisions

This law shall come into force from its publication date and be enforced as follows:

- a) in case of the employees of the National Anticorruption Center and competences of the Security and Information Service – since the date of publication;
- b) in case of the employees of other public entities – after the expiry of the 6-month term since the date of publication.

Article 22. Transitory provisions

(1) Within 10 days from the publication of this law, the public entities falling under it shall inform, under signature, public agents of the possibility to apply professional integrity tests. The refusal to sign shall not exonerate public agents from their disciplinary liability in case of a negative result of the professional integrity test.

(2) The financial resources necessary for the application hereof shall be provided in the budget of the National Anticorruption Center and of the Information and Security Service.

(3) Until the application of this law, the National Anticorruption Center shall verify the public entities regarding the information of public agents according to para. (1), as well as the manner of keeping the gift registers and inappropriate influence denunciation registers, granting them methodological support, if necessary.

(4) The Government of the Republic of Moldova, within 3 months since the enforcement of this law:

- a) shall submit to the Parliament proposals on harmonizing the legislation in force with this law;
- b) shall make its normative documents compliant hereto and ensure the adoption by the subordinated institutions of the normative documents necessary for the application hereof;
- c) shall ensure, from available means, the financial and technical resources necessary for the immediate application hereof.

(5) The National Anticorruption Center and the Security and Information Service shall submit, within 12 months since the coming into force of this law, a report regarding the implementation of the law to the National Security, Defense and Public Order Commission and to the Legal, Appointments and Immunity Commission of the Parliament.

THE PRESIDENT OF THE PARLIAMENT

Igor CORMAN

Chisinau, December 23m 2013.

No. 325.

Annex – excluded

6.3. Informative Memo

INFORMATIVE MEMO

for the Draft Law on amending and completing certain legislative acts

Conditions which imposed the development of the draft and expected purpose

On December 23, 2013 the Parliament of the Republic of Moldova adopted the Law No. 325 on Professional Integrity Testing, the provisions of which entered partially into force on February 14, 2014 (when the law was published), and partially – on August 14, 2014 (when the activity of professional integrity testing actually started).

On June 20, 2014 a group of MPs challenged certain provisions of this law under the Constitutional Court, which on April 16, 2015 expressed its opinion in Decision No. 7, extending the challenge object to cover the provisions of the entire law; the law was declared constitutional except for a number of provisions, which induced difficulties in applying the professional integrity tests by the National Anticorruption Center (NAC) and the Security and Information Service (SIS).

In particular, the Decision of the Constitutional Court No.7 / April 16, 2015 has criticized the Law No. 325/2013 due to the fact that it is uncompliant with the provision of art.6 (the right to a fair trial) and art.8 (the right to respect for private and family life) of the European Convention on Human Rights (ECHR) from the perspective of tested public agents' human rights. The Court mentioned that the review of this notification was protracted to allow the Government and the Parliament to adjust the existing legislative framework with the provisions of the new law and the endorsement provided by *Amicus Curiae* of the Venice Commission from December 16, 2014, so as to have a higher level of legislative coherence with the rules applied to all the public agents and better clarification of the specific category of public agents: judges from ordinary courts and from the Constitutional Court. Alongside the declaration on constitutionality of the Law No. 325/2013, excepting certain provisions, the Court recommended to extend the circle of subjects to apply the law to, so as to cover all the categories of public agents, including the MPs, ministers, and locally elected officials.

After the publication of the motivated decision of the Constitutional Court on May 15, 2015, via the Order of the Justice Minister No. 215 dated May 21, 2015, there was established the Inter-institutional Working Group to review the Law No. 325 dated October 23, 2013 on Professional Integrity Testing (hereinafter referred to as the Law No. 325/2013) in compliance with the Decision of the Constitutional Court No. 7 dated April 16, 2015, composed from representatives of the National Anticorruption Center, representatives of the Superior Council of Magistrates, judges, prosecutors, representative of the PA "Center for Corruption Analysis and Prevention", representative of the US Embassy, and representatives of the Ministry of Justice. As a result of the activity carried out by the working group, for the purpose of reviewing the provisions of the Law No. 325/2013 in line with the objections of the Constitutional Court, for the mechanism of applying the professional integrity tests to become

viable and compliant with the Court's objections.

At the same time, according to the provisions of the Law No. 325/2013, the legal framework should have been adjusted to the provision of the new law within a period of 3 months, and this did not happen.

Taking into account the draft proposals, it is suggested to operate amendments not only in the Law No. 325/2013, but also in the special laws regulating the activity of different categories of public agents, subjects of the Law No. 325/2013.

We consider that the implementation of the draft will have a significant impact on preventing and combating corruption acts, and the application of disciplinary sanctions for the public agents noncompliant with the integrity criteria will contribute to the implementation of the "zero tolerance for corruption" principle, which is established in the National Anticorruption Strategy, approved via the Parliament Decision No. 154 dated 21.07.2011, and, most importantly, it will increase citizens' confidence for the legal system bodies and the State in general.

Perception of the issues tackled in the draft through the normative framework in force, reasoning the regulatory needs and pointing out the new elements

The draft suggests:

- to adjust the Law No. 325/2013 according to the Constitutional Court Decision No. 7 dated April 16, 2015
- to adjust the legislative framework in force to the provisions of the Law No. 325/2013.

Adjusting the Law No. 325/2013 according to the Constitutional Court Decision No.7 dated April 16, 2015

The amendments and completions operated in the Law No. 325/2013 are meant to enforce successfully the law by removing some legislative impediments and completing the law with provisions to improve the process of law enforcement without the impediments established in the process of integrity test performance.

As a result of the working group activity, a new concept was agreed for applying the professional integrity tests and namely as a stage of the ***institutional integrity assessment***. Hence, the professional integrity testing applied to the public agents from public entities will focus not on sanctioning the missing professional integrity of public agents, but rather on establishing the gaps in the institutional integrity environment within the public entity, which lead to a behavior with no professional integrity of the public agents; the head of the public entity being responsible for developing the institutional integrity environment.

Thus, the development of the institutional integrity implies the enforcement of ***anticorruption legislation and policies***, adopted at the national level for all the public agents (e.g.: observing the regime related to gifts, conflicts of interest, securing transparency when using the public assets, denouncing corruption acts, related acts, and corruption behavior deeds, disclosing the inappropriate influences, protecting integrity announciators, etc.), as well as the

sector rules for certain categories of public agents (e.g.: specific integrity measures for judges, prosecutors, police officers, etc.), established in special laws and codes of ethics for the respective public agents. At the same time, the heads of public entities may adopt **institutional policies to increase integrity level via departmental acts**, to impose specific requirements to the public agents from the respective entity, conditioned that these departmental requirements do not set integrity standards under the limit of those set in the legislation.

The gaps in the institutional integrity environment shall be established based on the **institutional integrity assessment**, the testing concept being included in this wider concept. Hence, the professional integrity testing of the public agents becomes a stage in the institutional integrity assessment, providing concrete evidence about the way in which the integrity environment is fostered and observed within the public entity. The institutional integrity assessment shall be performed according to the initial approach set in the Law No. 325/2013, by the NAC in relation to all the public entities and by the SIS – in relation to the NAC and its own public agents, and shall cover the following:

- 1) identification of the corruption risks of the public entity,
- 2) professional integrity testing of the public agents from the assessed entity,
- 3) description of the corruption risks and analysis of the factors generating them
- 4) recommendations for improving the institutional integrity environment.

For the given purpose, the public entities will support the process of risks' identification and risk factors' analysis by providing the necessary information to the NAC/SIS, in order to assess the institution's integrity environment. Hence, it should be mentioned that while developing the assessment criteria, the comparative study conclusions were taken into account, along the methodology on assessing corruption risks within public institutions in South-Eastern Europe, carried out by the Regional Anticorruption Initiative under the Stability Pact of South Eastern Europe, in 2015.

The Law No. 325/2013 aims to regulate the institutional integrity assessment performed by the NAC and SIS, as appropriate, including the procedure for random professional integrity testing of public agents from the public entities subject to the respective assessment and its consequences. To start the professional integrity testing based on the corruption risks identified during the assessment, an *ex-ante* judiciary endorsement shall be obtained for the special means and behavioral limits of the testers. Moreover, the court will also assess the tests' results, verifying how the testers have observed the endorsement conditions, before reflecting such results in the assessment report (*ex-post* judiciary control procedure).

The results of the institutional integrity assessment, including the results of the applied professional integrity tests, will be included in the **report of the institutional integrity assessment**, which will be submitted to the head of the public entity and/or to the self-

governing body, as appropriate, for necessary measures to be taken in order to create/reestablish the institutional integrity environment within the respective institution. For this purpose, the head/self-governing body should urgently (at most in one month) adopt an integrity plan; the implementation of the respective plan within a short period of time (2 months) will allow redressing considerably the public agents' integrity and, subsequently, of the institutional integrity environment in the public entity.

Afterwards, the NAC/SIS will come back with a repeated assessment of the institution to obtain a confirmation of the institutional integrity environment improvement, as a result of the integrity plan implementation, and this will serve as evidence of the entity head's managerial efficiency. If the head of the entity refuses to adopt an integrity plan or does not implement the respective plan within set deadline, or if the implementation of the plan does not confirm the considerable change of the institution's integrity environment, the NAC/SIS will be entitled to suggest the hierarchically superior entity to dismiss the head of the assessed public entity, based on the fact that systemic corruption exists in the entity he/she is a head of, and the respective entity fails to serve citizens' interests, violating their rights. The refusal to dismiss the head of the public entity may be challenged in the specialized court of administrative disputes.

In this context, it is important to recall the US State Department Report on human rights situation in the Republic of Moldova, which established that systemic corruption in the public institutions is the main reason for violating human rights in our country. Hence, we consider that making the public institutions' managers responsible for suppressing corruption in the institutions they manage will also meet the expectations of the development partners of the Republic of Moldova.

At the same time, to obtain the public support and the society's positive pressure on the public entities' heads who should adopt and implement urgently an integrity plan, as well as the pressure on the entities responsible for appointing the respective heads – the report assessing the corruption institutional risks, except for the personal data of the public agents who failed the professional integrity tests, will be published and sent to the heads of the respective public entities or self-governing bodies, as appropriate. The heads of the respective public entities or self-governing bodies will receive the full report so as to find out the public agents with negative results obtained during the integrity test.

Adjusting the legislative framework in force to the provisions of the Law No. 325/2013.

The draft law introduces new rules in a number of legislative acts, especially in relation to the following:

1) Establishing in the special laws of the public entities to be subject to the provisions set forth in the Law No. 325/2013, including the Law 158/2008 on Public Position and Public Servant

Status, and Labor Code the following:

- the obligations of the public agents to observe the provisions of art.6 para.(2) of the Law No. 325/2013;
- the requirement for the head of the public entity/self-governing body to ask for the record certificate when employing public agents;
- setting the disciplinary sanctions for violating the obligations set forth in art.6 para.(2) of the Law No. 325/2013;
- setting the possible reason for dismissal in case of the negative results of the professional integrity test (although it remains to be upon the discretion of the employer);
- setting the interdiction to dismiss or to transfer in case of the negative results of the professional integrity test, before finalizing the disciplinary proceedings.

Generalizing the above-mentioned, it should be noted that to increase the quality of public services, to promote the integrity values of the public agents, alongside other employment conditions set for public authorities and institutions, there was introduced also the condition for the head of the respective entity/self-governing body to ask for the professional integrity record certificate; and a new reasons was introduced for the possibilities of dismissal – admission of integrity incidents in the activity, as it is provided in the Law No. 325/2013.

2) Establishing direct competences regarding the institutional integrity assessment in the special laws regulating the activity of the NAC and SIS. The respective completions aim to adjust the provisions of the Law on RM Security and Information Service and those of the Law on the National Anticorruption Center to the Law No. 325/2013.

3) Amendments were made as well in the Law 271-XVI dated 18.12.2008 on Verifying the Holders and the Candidates of Public Positions – a check performed by the Security and Information Service, but it does not function currently because the article 5 of the law (persons subject to verification) refers to Annex No. 2 of the Law 158/2008 on Public Position and Public Servant Status, which was abrogated when the Law No. 199/2010 on Status of Persons with Public Dignity Positions entered into force. This aspect was discussed a number of times by the civil society. In 2014 *Transparency International Moldova* launched the survey “National Integrity System 2014” for the Republic of Moldova, which came up with a recommendation under the chapter “Detailed recommendations based on the profile of the National Integrity System pylons”, sub-chapter “Anticorruption Agencies” – to ensure the verification of the candidates and holders of public positions. This modification is also imposed by the need to ensure good application of the provisions proposed via the Law No. 325/2013 related to securing the institutional integrity environment.

Actually, the Action Plan for 2014-2015 on implementation of the National Anticorruption Strategy for 2011-2015, approved via the Parliament Decision No. 76 dated 16.05.2014, in measure 27 under chapter V “Improving anticorruption legislation and its operational mechanisms, including through parliamentary oversight”, provides for the development of the draft law to amend and complete the Law 271-XVI dated December 18, 2008 on Verification of Candidates and Holders of Public Positions, so as to remove the deficiencies emerged

<p>during the process of its implementation.</p>
<p>Economic-financial reasoning</p>
<p>The implementation of the draft provisions will not need additional financial costs than the ones provided for the respective budgeter year.</p>
<p>Incorporation of the draft in the system of normative acts in force, and normative acts to be developed or amended</p>
<p>The draft fits perfectly the system of legislative acts, operating the necessary modifications so as to adjust the Law No. 325/2013 to the Constitutional Court Decision No. 7 dated April 16, 2015, as well as of the legislation in force to the provisions of the Law No. 325/2013.</p>
<p>Endorsement and public consultation of the draft</p>
<p>For the purpose of observing the provisions of the Law 239/2008 on Transparency of Decision-making Process, the draft was posted on the webpage of the Ministry of Justice (menu “Decisional Transparency”, compartment “Public Consultations”), and on the governmental portal www.particip.gov.md.</p>

Deputy Minister

Eduard SERBENCO

6.4. Track change comparison of amended Law No. 325

[The following is a track change comparison of Law No. 325 as of January 2015, in an English translation provided to the Council of Europe by the Moldovan authorities under another activity, and of the consolidated Law No. 325 if the amendments would be adopted. The comparison is without any guarantee of being comprehensive or fully correct, but is based only on an automated comparison of two MS Office Word files.]

L A W

on Institutional Integrity Assessment

No. 325

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Pursuant to Art. 72 para.(3) letter r) of the,
The Parliament adopts this organic law.

Chapter I

GENERAL PROVISIONS

Article 1. Scope

This law sets forth the purpose, principles, means, methods, procedures, and legal effects of the institutional integrity assessment within public entities.

2. Professional Purpose of the institutional integrity assessment

The institutional integrity assessment is performed to:

a) increase the accountability of heads of public entities and self-governing bodies for developing, maintaining, and enhancing the professional integrity environment within public entities;

c) identify, assess, and remove corruption risks within public entities;

Note: Letters b) and d) art.2 are declared to be unconstitutional, according to the Decision of the Constitutional Court No.7 dated 16.04.2015, in force since 16.04.2015.

e) secure professional integrity of public agents, to prevent and combat corruption within public entities;

f) increase the denunciation of corruption acts by public agents.

Article 3. Principles

The institutional integrity assessment process shall be performed under the mandatory observance of the following principles:

a) legality;

b) observance of the fundamental human rights and freedoms, of human and professional dignity;

b¹) fair balance between the fundamental rights and freedoms of the citizens affected by public agents' corruption acts, on one hand, and the fundamental rights and freedoms of the public agents, on the other hand;

c) unbiased, equitable, and non-discriminatory treatment of the public agents subject to testing;

d) presumption of good faith of the assessment subjects;

e) presumption of institutional integrity of the public entities;

f) transparency of institutional integrity assessment results, with exceptions provided in the Law No. 245 dated 27.11.2008 on State Secret.

Article 4. Concepts

For the purpose hereof, the following concepts shall have the following meanings:

public agent – a person employed within a public entity and exercising a public function, a special status public function, a public dignity function, a person employed in the office of the person exercising a public dignity function or providing services of public interest;

public entity – legal entity with the status of:

a) public authority, central authority, specialized central public authority, local public authority, as well as the organizational structure under such authorities or from their area of competence;

b) state, autonomous, independent, self-governing and/or regulatory authority, institution, body, organization, office or agency;

c) Constitutional Court, court, Prosecutor's Office

d) state enterprise, with state majority capital or municipal enterprise.

services of public interest – performing activities for servicing the population in the public area, within institutions, enterprises, organizations, and other state structures, with state majority capital, municipal or local ones;

institutional integrity – professional integrity of all public agents from public entities, which is fostered, controlled, and enhanced by the heads of entities, as well as zero tolerance to public agents' corruption acts, by sanctioning their missing professional integrity;

professional integrity – performance of all professional activities by the public agent in an ethical manner, free of inappropriate influence and corruption acts, observing the public interest, supremacy of the Constitution of the Republic of Moldova and of the law;

institutional integrity assessment – the process of identifying corruption risks within public entities, assisted by analytical and practical methods (professional integrity testing), describing the factors determining the identified risks and their consequences, and providing recommendations for mitigating such risks, performed in compliance with the provisions set forth in this law;

corruption risk – possible even of corruption act occurrence, affecting the achievement of public entity's objectives;

risk factor – a circumstance of any type, allowing, encouraging, and provoking the occurrence of corruption acts within the public entities or perpetuating them;

professional integrity test – the creation and application by the tester of certain virtual, simulated situations, similar to those in the work activity, materialized through dissimulated operations, conditioned on the activity and behavior of the tested public agent, in order to passively monitor and establish the reaction and conduct of the tested public agent, hence determining the level of damage to the institutional integrity environment and the corruption risks of the public entity within the institutional integrity assessment;

professional integrity testing – all the processes related to performance of the professional integrity test, a stage of the institutional integrity assessment;

tester – person from the National Anticorruption Center and Security and Information Service empowered by this law and by special laws with duties and competences to perform the professional integrity tests;

integrity incident – corruption act occurred in real circumstances, any other deed similar to the corruption act, occurred during a professional integrity test;

corruption acts – corruption deeds, corruption related acts and corruption behavior acts, specified in the Law No. 90 dated June 13, 2008 on Preventing and Combating Corruption;

integrity plan – internal plan adopted under the conditions of this law by the head of the public entity and/or self-governing body, as a result of the institutional integrity assessment, through which the institutional integrity environment may be developed and/or enhanced during the implementation period;

– interference in the public agent's professional activity from third parties manifested through pressure, threats or requests in order to determine the respective public agent to perform his/her professional activity in a certain way, whenever the given interference is illegal and is not accompanied by promising, offering or giving, personally or through an intermediary, goods, services, privileges or advantages in any form, which are not due to him/her (does not meet the elements of an offense).

Note: In article 4 the text "justified risk – risk without which the socially useful purpose to objectively set the public agent's conduct within the professional integrity test cannot be reached, and the professional integrity tester who risks took measures to prevent damages of the interests protected by law" is declared unconstitutional, according to the [Decision of the Constitutional Court No.7 dated 16.04.2015](#), in force since 16.04.2015.

Article 4¹. Institutional integrity environment

The public entities shall perform their activity in the public interest, ensuring the institutional integrity environment. The public agents (2) shall exercise their duties with professional integrity.

(2) The institutional integrity environment shall be secured through enforcement of national and sector anticorruption policies, as well as of specific professional integrity requirements for the activity of the public agents within public entities. The following shall be deemed as national and sector anticorruption policies securing the institutional integrity environment:

- a) employment and promotion of public agents on merit and professional integrity basis;
- b) regime of incompatibilities, restrictions in hierarchy and limitations of publicity;
- c) regime of property and personal interests' declaration;
- d) regime of conflicts of interest;
- e) avoidance of favoritism;
- f) regime of gifts;
- g) denunciation and treatment of inappropriate influences;
- h) denunciation of corruption acts and protection of integrity denunciators;
- i) non-admission of corruption acts;
- j) transparency in decision-making process;
- k) access to information of public interest;
- l) transparent and responsible management of public patrimony, reimbursable and non-reimbursable finances;
- m) professional ethics and deontology;
- n) regime of restrictions and limitations related to termination of the mandate, work relations, duty relations, or migration to the private sector of the public agents (revolving doors).

(3) The provisions of para. (2) shall be applied appropriately for different categories of public agents, with the derogations provided by the special laws regulating the respective activity.

(4) The specific requirements of professional integrity for the activity of public agents from public entities shall be adopted through departmental acts of the public entities, which cannot provide for other derogations than those set forth in para. (3) or less rigorous behavioral standards for the heads of public entities and public agents than those provided by the national and sector anticorruption policies.

(5) The public entities shall determine the institutional policy for sanctioning any professional integrity lacking behavior of public agents, in compliance with the provisions of the legislation in force, aiming to discourage other public agents from such behavior in future.

Article 5. Subjects of institutional integrity assessment

(1) Public entities, self-governing bodies, public agents, the National Anticorruption Center, and the Security and Information Service shall be subjects of the institutional integrity assessment.

(2) The institutional integrity assessment shall be applied for public entities, providing the possibility to apply the professional integrity tests for public agents.

(3) The institutional integrity assessment and the professional integrity tests shall be performed by the National Anticorruption Center and Security and Information Service, involving testers.

Article 6. Rights and obligations of public agents

(1) Public agents shall be entitled:

to be informed about the specific professional integrity requirements for the public agents within public entities, as well as about the disciplinary sanctions which may be applied for nonobservance of such requirements, in compliance with the provisions set in art. 4¹;

b) to be informed about the integrity plan of the public entity, adopted after announcing the institutional integrity assessment results;

c) to be informed about the integrity tests performed in relation to them;

d) to challenge in the court the application of the integrity test performed in relation to them.

(2) Public agents shall have the following obligations:

a) not to admit corruption acts;

b) to denounce immediately to the competent bodies any attempt of being involved in the actions provided under letter a);

to know and to observe the d) duties they have to perform according to the national and sector anticorruption policies, provided under art. 4¹;

d) to know and to observe the specific professional integrity requirements for the activity of public agents within public entities, about which they were informed;

e) to perform the measures set forth in the integrity plan, adopted by the public entity, or, as appropriate, by the self-governing body, as a result of the institutional integrity assessment.

Article 7. Rights and obligations of public entities and self-governing bodies

Public entities and self-governing bodies shall a) be entitled:

a) to be informed, within the deadlines provided herein, about the results of the institutional integrity assessment and application of professional integrity tests in relation to the public agents for whose ethics and discipline they are responsible for.

b) to deem the positive result of the professional integrity test as an additional reason to promote the public agent, without disclosing such reason.

(2) Public entities and self-governing bodies shall have the following obligations:

a) to foster the institutional integrity environment, as it is set forth in Article 4¹.

a¹) to inform the public agents about the specific professional integrity requirements for the activity of public agents within public entities, as well as about the disciplinary sanctions which may be applied for non-observances of such requirements, in compliance with the provisions set in art. 4¹;

a²) to inform the public agents, with a signature-based confirmation, about the possibility to be subject to the professional integrity test. Such information shall be provided upon the appointment of the newly-employed public agents; and for the public agents employed upon the coming into force of this law – within the deadlines set in the final and transitory provisions. The non-information of the public agent by the public entity or the non-signature of the information confirmation by the public agent based on this law shall not be a barrier to perform the professional integrity tests in relation to such a public agent, to undertake the institutional integrity assessment of the public entity, as well as to apply the disciplinary sanctions in compliance with the legislation in force;

c) a³) to adopt, secure, and report the implementation of the integrity plans within the deadlines set in this law;

a⁴) to inform the public agents about the performed professional integrity tests concerning them;

a⁵) to take the necessary measures concerning the public agents who underwent the testing, based on the qualification of the behavior they proved to have during the test and the evidences confirming it;

b) to ensure the access of the institution assessing the institutional integrity to all the registers and record forms fostering the institutional integrity environment provided in art.4¹, including in electronic format, as well as to any other necessary information under the conditions and limits set in letter e) Article 6 of the Law No. 1104 dated June 6, 2002 on National Anticorruption Center and letter j) para. (1) Article 9 of the Law No. 619 dated October 31, 1995 on State Security Bodies.

c) to allow withdrawal of the documents submitted to the public entity during the professional integrity test, of the audio-video recordings performed by the public entity during the professional integrity test, and to undertake other measures necessary to secure the confidentiality of testers, codifying documents, special means and techniques used during the professional integrity test.

Article 8. Rights and obligations of the institutions assessing the institutional integrity

(1) The institutions assessing the institutional integrity shall be entitled:

a) to determine, under the conditions of this law, the areas for performing the institutional integrity assessment, assessed public entities, categories of public agents from the public entities subject to random professional integrity tests, and frequency of assessments;

b) to organize and benefit from special trainings on methods and means applied within the professional integrity testing;

c) to use within the professional integrity testing documents encoding the identity of persons, structures, organizations, premises, and transportation means, as well as the identity of the persons set in art.12 para. (2);

(2) d) to perform repeatedly an institutional integrity assessment of a previously assessed public entity in order to verify the progress for enhancing the institutional integrity as a result of the integrity plan adoption and implementation;

e) to suggest the hierarchically superior public entities or self-governing bodies to dismiss the heads of the public entities subject to repeated assessment provided in letter d), if the integrity plan failed;

f) to challenge the decisions of the public entities' heads in relation to the reports on institutional integrity assessment and the refuse of the hierarchically superior public entities to proceed with the proposal provided in letter e) in the administrative dispute court, observing the prior procedures.

(2) The institutions assessing the institutional integrity shall have the following obligations:

a) to ensure confidentiality of testers' activities, codifying documents, and special technical means used during the testing, except for the cases provided in this law;

ba¹) to observe the regime of personal data protection, under the conditions set in the Law No. 133 dated July 8, 2011 on Personal Data Protection, except for the cases provided in this law;

b) to send to the heads of the public entities or, self-governing body, as appropriate, the full version of the report on institutional integrity assessment, according to the provisions set in art.13 para.(2¹) letter a);

b¹) to publically release the depersonalized version of the report on institutional integrity assessment results, according to the provisions set in art.13 para. (2¹) letter b), simultaneously with sending the full version to the public entity or to the self-governing body, as appropriate;

b²) to publically release the full version of the report on institutional integrity assessment results, according to the provisions set in art.13 para. (2¹) letter a), if the assessed public entity has no hierarchically superior entity, as well as if the integrity plan adopted by the self-governing body failed;

c) to undertake all the measures to prevent the eventual negative consequences for third parties in relation to the performance of the professional integrity test;

d) to ensure the destruction of the audio/video recordings performed during the integrity test within the deadlines set in art. 18 para. (1);

e) to adopt and publish the methodology for identification of corruption risks and analysis of risk factors, within the institutional integrity assessment.

(3) The obligations of the institutions assessing the institutional integrity shall duly cover the testers and the persons analyzing the corruption risks within public entities.

Article 8¹. Testers' integrity

(1) The institutions assessing the institutional integrity shall ensure testers' integrity, adopting internal policies for this purpose, in compliance with the provisions set in this article.

The candidates for tester's position shall be subject to a prior special control, mandatory polygraph testing, and psychological tests related to the integrity of their professional past, in order to establish existing inappropriate motivations to perform the activity of professional integrity testing, and other relevant aspects stated in the internal policies.

(3) To ensure objectiveness and to conspire the professional integrity testing activities, the testers shall be subject to periodical polygraph verifications, psychological verifications, lifestyle monitoring, and professional integrity tests, according to the competences set in art.5, as well as according to the extended obligation to state the potential personal interests and conflicts of interest, in relation to the general legal regime applicable to public agents.

(4) The extended obligation to state the potential personal interests and conflicts of interest implies the obligation for the selected testers to submit a statement, under their own responsibility, regarding their previous jobs, kinship, friendship or hostility relations from their private lives with any public agents, whose testing falls under the competence of the institution they are a part of. The submitted statement shall be updated by the tester once biannually, as well as whenever the tester finds out that he/she is to perform a professional integrity testing of a public agent, the private life relations with whom were not included in the submitted statement and/or not updated previously. The respective statement shall be submitted to the testing activity coordinator, according to the template provided in the internal policies set forth in para. (1).

(5) If during the performance of the professional integrity test, the tester finds out that he/she knows in private settings the public agent subject to the respective test, and the tester did not know that the respective public agent works in the respective public entity, he/she shall undertake, if possible, actions to avoid the professional integrity testing of the respective public agent and to stop such testing, in order not to admit the testing activities' uncovering.

(6) The result of the professional integrity test performed in relation to a public agent with violation of provisions set in para. (4) and para. (5) shall be assessed by the specialized court as inconclusive, under the conditions set in art. 12¹.

(7) The tester using the materials accumulated during the performed professional integrity test for other reasons than those provided in this law shall be criminally or administratively liable for abuse of office, excess of duties, and other offences, as appropriate.

(8) The testers' integrity obligations provided in this article shall be applied accordingly to the testing activity coordinator as well.

Article 9. Guarantees and responsibilities

(1) In case the public agent's behavior is assessed as a negative result of the professional integrity test, the tested public agents shall be subject only to disciplinary liability, depending on the severity of the established deviations and in compliance with the legislation regulating the activity of the respective public entities, observing the provisions set in art. 16.

(2) The results and materials of the professional integrity test shall not be used as means of evidence in a criminal or minor offence trial against the tested public agent.

The methods and means to test and set professional integrity tests shall not represent special investigation activities as provided by the [Law No. 59 dated March 29, 2012](#) on Special Investigation Activity.

(4) The use of the professional integrity test materials in a civil trial shall be admitted as provided by the civil procedural legislation. The results of the professional integrity testing and the materials of the professional integrity test may be used as evidence in a civil trial if they are pertinent, admissible, veridical, observing the public interest, human rights and freedoms, and the declassification conditions.

(6) Note: Paragraph (5) of art. 9 is declared unconstitutional according to the [7 dated 16.04.2015](#), in force since 16.04.2015

By derogation from the provisions set in para. (2) of this article, if during the professional integrity test performance, the tester finds out real illegal activities carried out by tested public agents or third parties, which are not generated by application of the professional integrity testing plan, the institution performing the institutional integrity assessment shall notify the competent body for measures provided by the legislation in the area to be taken.

(7) The persons from the institution assessing the institutional integrity shall be liable for disclosing the confidential data provided in art.7 para. (2) letter b), the information related to private life beyond the professional activities of the public agent and for publishing the personal data in contradiction to the provisions set in art.8 para. (2) letters a) and a¹) which became available to them during the performance of the professional integrity tests.

Chapter II

PROFESSIONAL INSTITUTIONAL INTEGRITY ASSESSMENT PROCEDURE

Article 10. Institutional integrity assessment initiation

(1) The institutional integrity assessment shall be initiated by:

a) the National Anticorruption Center – regarding all the public entities under the jurisdiction of this law, except for the Security and Information Service;

b) the Security and Information Service – regarding the National Anticorruption Center;

c) the internal security subdivision of the Security and Information Service – regarding the Security and Information Service. In this case, the internal security subdivision of the Security and Information Service has the possibility to go through all the assessment stages provided in art.10¹ or only the stage of professional integrity testing of the public agents from the Security and Information Service.

Note: Paragraphs (2)-(3) of art.10 are declared unconstitutional, according to the [Constitutional Court Decision No. 7 dated 16.04.2015](#), in force since 16.04.2015

Article 10¹. Institutional integrity assessment stages

(1) The institutional integrity assessment shall be performed through the following stages:

- Stage 1. Identification of corruption risks within the public entity;
- Stage 2. Testing the professional integrity of public agents;
- Stage 3. Description of corruption risks and analysis of factors generating such risks;
- Stage 4. Recommendations for improving the institutional integrity environment.

(2) Stage 1 shall be carried out based on the examination of the integrity incidents admitted by the public agents from the public entities; information sent by the citizens, materials from mass-media; analytical sources (reports, studies, surveys, indicators, etc.); as well as of the modalities affecting the human rights through the identified corruption risks.

(3) Stage 2 is an optional stage of the professional integrity test. The tester shall be responsible for performing this stage. The public agents to be subject to testing shall be selected on random basis, depending on the corruption risks identified in line with para. (2). The motivated decision to initiate the professional integrity testing of the public agents within a public entity shall be taken by the institution assessing the institutional integrity, with the endorsement of the specialized court, under the conditions set in art. 10², without

prior information of the given public entity management or of the self-governing body, as appropriate.

b) (4) Stage 3 shall be carried out by describing the corruption risks identified during the stage 1 and, where appropriate, confirmed during the professional integrity testing in stage 2 of the assessment, as well as by analyzing the risk factors which increase the likelihood of such risks' materialization. The analysis shall be carried out according to the following risk factors' types:

a) external factors – risk factors which are outside the control of the public entity;

b) internal factors – organizational, control, and sanctioning risk factors which are under control of the public entity, which are the result of their action or lack of action;

c) operational factors – factors emerging during the activity of the public entity;

d) individual factors – factors which may motivate a certain public agent to admit corruption acts and to act contrary to the institutional integrity environment.

(5) Stage 4 implies setting some minimum requirements and meeting these requirements would allow the public entity to reduce the corruption acts among the public agents.

(6) If the institutional integrity assessment is performed without stage 2 of professional integrity testing, stages 3 and 4 shall follow the fulfilment of stage 1.

(3)

Article 10². Endorsement of the professional integrity test

(1) The decision to initiate the professional integrity test within the institutional integrity assessment shall be taken by the institution assessing the institutional integrity and endorsed by the specialized court. The decision to initiate the professional integrity test and the endorsement shall be confidential until the submission of the institutional integrity assessment report.

(2) The motivated decision to initiate the professional integrity test shall indicate:

a) the reasons for initiating the professional integrity test within the public entity;

b) the corruption risks identified within the public entity subject to assessment;

c) the objectives of the professional integrity testing of the public agents within the entity;

d) the criteria for selecting the public agents in the public entity to be subject to the professional integrity testing;

e) the possibility of using the audio/video recording means, communication means, and other technical means for obtaining information in a concealed way, as well as the possibility to offer, promise or send goods, services, provision of privileges and advantages, in order to capture the public agents' behavioral acts and not to disclose the testers' activity.

Article 11. Professional integrity test planning and fulfilment

(3) The professional integrity test plan is a confidential document, which is approved by the coordinator of the professional integrity testing activity, based on the motivated decision endorsed by the court according to art. 10² ; it shall contain the following information:

- a) the initiator of the test and the motivated decision to initiate the test;
- a¹) testing objectives;
- b) testing subjects;
- c) envisaged dissimulated operations;
- d) place, duration, participations, and logistical assurance of the testing;
- e) simulated virtual situations, behavior hypotheses and action options of the professional integrity tester and the tested public agent;
- g) other information relevant for performing the test.

Note: Paragraphs (1), (2) and (4) of art.11 are declared unconstitutional, according to the Constitutional Court Decision No. 7 dated 16.04.2015, in force since 16.04.2015

(5) During the professional integrity testing, the testers shall undertake the necessary measures to support the simulated virtual situations, planned in line with para.(3) letter e), hence ensuring the fulfilment of the plan's provisions. Upon the request of the institution assessing the institutional integrity, other state institutions shall provide free-of-charge assistance to carry out the measures for supporting the simulated virtual situations.

(6) In certain contingencies, the testers may deviate from the approved plan, to the extent in which their actions contribute to the achievement of the testing objectives and do not lead to chancing the motivated decision endorsement conditions, set forth in art.10².

(7) If the contingencies emerged during the enforcement of the plan lead to identification of new corruption risks unforeseen in the motivated decision, the motivated decision completed with the new identified risks shall be endorsed by the specialized court within 3 working days since the occurrence of the respective contingencies. If the judge refuses to endorse, the materials accumulated by the tester in the given contingencies shall be destroyed, except for the cases when these materials are necessary for the purpose of art. 9 para. (6).

(8) If needed, when performing the professional integrity testing, the testers shall collaborate with the representatives of the public entities in which the tested public agents work, under the conditions of this law and of the special rules regulating the cooperation in the area.

Article 12. Means and methods to test and set professional integrity tests

(1) The testers shall perform their activity on confidential basis. They may use for this purpose the means and methods set forth in art.8 para. (1) letter c).

(2) In exceptional cases, other persons may participate in performing the professional integrity testing, with the prior approval and guarantees that they will not disclose the performed activity.

(2¹) The professional integrity tests shall be performed observing the fundamental rights and freedoms of the public agent. The possibility to restrict such rights and freedoms during the professional integrity testing shall be provided in the motivated decision to initiate the professional integrity test, endorsed by the judge under the conditions set in art. 10¹ para. (3).

(2²) During the professional integrity testing of judges, the (5) institutions assessing the institutional integrity and the testers shall observe the guarantees of judges' independency, being prohibited to interfere in justice application in real cases trialed in courts.

Note: Paragraphs (3)-(6) of art.12 are declared unconstitutional, according to the Constitutional Court Decision No. 7 dated 16.04.2015, in force since 16.04.2015

To capture the behavior of the public agent under the professional integrity testing, there shall be used means for audio/video recording, communication means, other technical means for obtaining information in a concealed way, held by the institutions assessing the institutional integrity or from other sources, and the possibility to send the goods, to provide services, to grant privileges and advantages shall be provided only if it is reflected in the motivated decision to initiate the professional integrity testing, endorsed by the judge under the conditions set in art. 10².

Article 12¹. Assessing the result of the professional integrity test

The situation when the public agent proves to have professional integrity, observing the obligations set forth in art. (6) para. (2) letters a)-c), shall be considered as positive result of the professional integrity test; the situation when the obligations are not observed shall be considered as negative results, and the situation when the behavior of the public agent can be classified neither as positive result nor as negative result, as well as the situation when the integrity test was performed with violations of the provisions set in this law shall be considered as inconclusive.

(2) The materials of the professional integrity tests shall be verified by the judge from the specialized court which has endorsed the decision to initiate the testing. While verifying, the judge shall review how the tester has observed the motivated decision to initiate the test, shall confirm or change the proposal of the institution assessing the institutional integrity regarding the assessment of the tested public agent's behavior, and shall determine the test results in compliance with the provisions set forth in para. (1).

(3) The judge shall decide upon the assessment of the public agents' testing results as positive, negative and inconclusive through a decision. At the same time, the judge

shall decide within the same decision or another decision for the tested public agents to return / voluntarily recover the assets, according to the situation set forth in art.16 para.(5).

(4) Upon the request of the institution assessing the institutional integrity, the judge shall solve via a decision any other situation emerged during the professional integrity testing, in order to secure the observance of fundamental human rights and freedoms, not to disclose the identity of the testers and to conspire the testing activity.

Article 13. Report on institutional integrity assessment results and evidence-bearing materials

After passing through all the stages set forth in art. 10¹, the institution assessing the institutional integrity shall compile a report on assessment results, which will cover the following information:

- a) the initiator of the institutional integrity assessment and the assessment stages;
- b) the corruption risks affecting the activity of the public entity;
- c) the findings regarding the integrity environment in the public entity, in line with the provisions set in art. 4¹;
- d) the integrity incidents admitted by the public agents;

the results of the professional integrity testing of public agents, describing the performed testing activities according to the test plan), as well as the behavior and actions of the public agents during the testing;

- f) how the human fundamental rights and freedoms are affected by the corruption acts in the public entity;
- g) recommendations / minimum requirements for removing the corruption risks.

(2) The report drafted under the conditions of para. (1) shall be compiled so as not to allow the disclosure of the persons involved in performing the professional integrity test, the forces, means, sources, methods, and activity plans of the National Anticorruption Center and of the Security and Information Service, as well as other information with limited accessibility.

(2¹) The report mentioned in para. (1) shall be concluded in two versions:

- a) full version, containing data about the tested public agents' identity;
- b) depersonalized version, without including data about the identity of tested public agents, such as name, surname, as well as other data leading to public agents' identification.

(3) The original audio/video recordings performed during the integrity testing shall be annexed to the full version of the report concluded under the conditions set in para. (1) and

shall be kept, on mandatory basis, together with the full version of the report in the institution which has carried out the institutional integrity assessment.

(4) The full version of the report on institutional integrity assessment results shall be submitted to the head of the public entity or to the self-governing body, as appropriate, within three working days since the moment the report is finalized. At the same time, the copies made under the conditions set in art.14 para.(8) of the original audio/video recordings and other materials confirming the negative results of the professional integrity test shall be also submitted, with the note about their confidential nature and the liability for disclosing other persons than those mentioned in art. 14 para. (8¹).

The depersonalized version of the report on institutional integrity assessment results shall be released publically on the webpage of the institution which has performed the institutional integrity assessment, alongside the submission of the full version of the report, under the conditions set in para. (4).

(6) By derogation from the provisions set in para. (5), the full version of the report on institutional integrity assessment results shall be published on the webpage of the institution which had assessed the institutional integrity of the public entities which do not have a hierarchically superior public entity, and for whose public agents the legislation does not provide the possibility of being held disciplinary liable, as well as in the situations set forth in art. 15 para. (6).

Chapter III

RESULTS AND CONSEQUENCES OF THE INSTITUTIONAL INTEGRITY ASSESSMENT AND PROFESSIONAL INTEGRITY TEST

Article 14. Public entity's actions after receiving the institutional integrity assessment report

The public entity or the self-governing body, as appropriate, shall review the institutional integrity assessment report immediately after submission.

(4) (2) If the institutional integrity assessment report determines corruption risks in the public entity, the public entity or the self-governing body, as appropriate, shall adopt an integrity plan within one month since the day the report was submitted.

(3) The integrity plan shall be implemented within two months since the day it was adopted, ensuring at least the fulfilment of the recommendations / minimum requirements formulated in the institutional integrity assessment report. The integrity plan shall cover:

- a) corruption risks (according to the report);
- b) actions for reducing / excluding the risks;
- c) deadlines;

d) indicators;

e) responsible people.

(4) For the corruption risks described in the institutional integrity assessment report, the occurrence of which is determined by external risk factors, the public entity or the self-governing body, as appropriate, shall include indirect actions preparing the mitigation of such risks in the integrity plan.

(5) During the development of the integrity plan, the public entity or the self-governing body, as appropriate may organize consultations with the civil society. The institution which has assessed the institutional integrity shall provide, upon request, methodological support for the given process. The responsibility for adopting and implementing the integrity plan belongs exclusively to the public entity or self-governing body, as appropriate.

(6) Upon the expiration of the deadline set in para. (3), the public entity or the self-governing body, as appropriate, shall conclude a report regarding the implementation of the integrity plan, which should be published on its webpage and sent to the institution which has performed the institutional integrity assessment.

(7) Within 60 days since the receipt of the institutional integrity assessment report, the public entity or the self-governing body, as appropriate, shall examine the materials confirming the negative result of the professional integrity test, sent under the conditions set in art.13 para.(4) and shall inform the institution which has assessed the institutional integrity about the undertaken measures and applied sanctions, providing a copy of the respective decision.

(8) To ensure confidentiality and conspiracy, the copy of records sent to the public entity or self-governing body, as appropriate, for confirming the negative results of the professional integrity test, may present the image and the voice of other persons than the tested public agent, the images of cars, places, and other backgrounds, as well as the sounds of recorded circumstances in such a way so as not to be recognized.

(8¹) While reviewing the materials provided under para. (8), the public entity or the self-governing body, as appropriate, shall ensure the access of the tested public agent or his/her representative, as appropriate, and of the specialized court to the materials sent by the institution which has performed the institutional integrity assessment.

(9) If the head of the public entity or a member of the respective entity's disciplinary body is in a direct kinship relation or affinity relation up to the fourth degree with the public agent subject to the professional integrity testing, the report about the negative result of the professional integrity test shall be communicated to the head of the hierarchically superior entity, who will take a decision on applying disciplinary sanctions to the tested public agent.

(10) After receiving the report on institutional integrity assessment, when taking the decision on promoting the public agents subject to the professional integrity testing, the

public entity or the self-governing body, as appropriate, shall take into consideration the test results.

Article 15. Repeated institutional integrity assessment. Consequences of integrity plan failure

(1) Upon receipt of the report on implementation of the integrity plan, the institution which has performed the institutional integrity assessment shall assess the progress achieved in enhancing the institutional integrity environment of the public entity, verifying if the institutional integrity plan was successfully implemented or failed. For the purpose of creating and continuously maintaining the institutional integrity environment, the public entities shall be subject to periodical institutional integrity repeated assessments, carried out in line with the provisions set in Chapter II; the number of such repeated assessment is unlimited.

(2) The implementation of the integrity plan shall be deemed as successful in the following cases:

a) if all or majority of measures included in the plan were fulfilled, with some exceptions, due to reasons outside the control of the public entity;

b) if the results of the repeated institutional integrity assessment of the public entity reveals the non-involvement of the public agents in corruption acts, less involvement of public agents in such acts as compared to the results of the previous assessment, but in any case does not denote a higher involvement than the level set in para. (3) letter c).

(3) The integrity plan shall be deemed failed in the following cases:

a) if the plan is not adopted within the set deadlines;

b) if the measures included in the plan are not fulfilled due to reasons under the control of the public entity;

c) if at least one third or more public agents are involved in corruption acts and this is revealed during the repeated institutional integrity assessment.

(4) If the integrity plan implementation failed, the institution which assessed the institutional integrity shall ask the hierarchically superior public entity to apply disciplinary sanctions, including the sanction of dismissing the head of the public entity. The limitation period for applying the disciplinary liability shall start since the receipt of the request.

(5) The refuse of the hierarchically superior public entity to apply the disciplinary sanction requested by the institution assessing the institution integrity under the conditions set in para. (4) may be challenged in the specialized administrative dispute court, observing the prior procedure. The challenge of the refuse in this case shall suspend the limitation period for the disciplinary liability.

(6) If the integrity plan adopted by the self-governing body of the public entity subject to repeated institutional integrity assessment failed, the full versions of the initial and repeated, as appropriate, institutional integrity assessment reports shall be deemed as being of public interest and shall be published on the webpage of the institution assessing the institutional integrity.

Article 16. Consequences of the negative result of the professional integrity test

(1) The disciplinary sanctions as a result of the negative result of the professional integrity test, including the dismissal of the tested public agent, shall be applied according to the legislation regulating the activity of the public entity where the respective public agent works. The limitation period for applying the disciplinary liability shall start since the receipt of the institutional integrity assessment report.

Note: Para. (2) art.16 is declared unconstitutional, according to the Constitutional Court Decision No. 7 dated 16.04.2015, in force since 16.04.2015

(3) As of the date of receiving the institutional integrity assessment report containing the negative results of the professional integrity test until finishing the disciplinary procedures, the public agent may not be dismissed based on the resignation application or transferred based on the transfer request.

(4) When finalizing the disciplinary procedure, the employees of the public entity in which the tested public agent works shall be informed about the main aspects established during the testing process and about the applied sanctions.

(5) The goods received during the professional integrity testing or their equivalent value shall be returned /recovered by the tested public agent who received them.

(6) The record regarding the professional integrity of the public agents shall be kept by the National Anticorruption Center and Security and Information Service, which shall issue information upon request. The purpose of the integrity record, as well as the situations when the employer request the information from such records, shall be provided in the Regulation on keeping and using the respective record, which is approved by the Government.

(7) The information about the negative results of the professional integrity test, assessed according to the provisions of art.12¹ shall be kept in the public agents' professional integrity records for:

- a) 5 years – regarding the violation of art.6 para.(2) letter a);
- b) 1 year – regarding the violation of art.6 para.(2) letters b) and c).

Article 17. Challenge of applied disciplinary sanctions

(1) The disciplinary sanction applied further to the negative result of the professional integrity test may be challenged by the tested public agent in the administrative dispute court, as provided by the legislation.

(2) The disciplinary sanction applied to a judge further to the negative result of the professional integrity test may be challenged according to the provisions set in the [Law No.178 dated July 25, 2014](#) on Judges' Disciplinary Liability.

(3) The challenge of the disciplinary sanctions set forth in para. (1) and (2) shall suspend the limitation period of the disciplinary liability.

(4) The competence to examine the challenges submitted according to this article in the administrative offence regime belongs to the specialized court. The judge who has endorsed the decision to initiate the test and who has verified the test results cannot participate in examining the challenge.

Article 18. Keeping the recordings performed during the professional integrity tests

(1) The audio/video recordings performed during the professional integrity testing shall be kept observing the rules for personal data protection, as set forth in the Law No. 133 dated 08.07.2011 on Personal Data Protection:

a) in case of a positive result – until the information of the employees working in the public entity the public agent subject to testing is part of;

b) in case of a negative result – until the court decision remains final and irrevocable or until the expiry of the limitation period for challenging the sanction, if the institution which has performed the professional integrity testing holds no information on a possible challenge.

(1¹) If the recordings set forth in para.(1) contain state secret information, the keeping and management of such materials shall be performed in line with the legislation on state secret protection.

(2) After the expiry of the deadlines established in para. (1), the original copy of the audio/video recordings performed during the professional integrity testing shall be destroyed by the institution which has performed the institutional integrity assessment, and the copies made under the conditions set in art. 14 para. (8) shall be destroyed by the public entities or the self-governing bodies, as appropriate, which have received them.

(3) In case of violation of the regime set for keeping, accessing, and destroying the audio/video recordings performed during the professional integrity testing, the liability for violation of provisions set forth in the Law No. 133 dated 08.07.2011 on Personal Data Protection or the Law No. 245 dated 27.11.2008 on State Secrete, as appropriate, shall arise.

AND FINANCING OF PROFESSIONAL INSTITUTIONAL INTEGRITY ASSESSMENTS

Article 19. Parliamentary control over the institutional integrity assessment activity

(1) The parliamentary control over the institutional integrity assessment activity shall be exercised by the National Security, Defense and Public Order Commission and the Legal, Appointments and Immunity Commission.

(2) The National Anticorruption Center and the Security and Information Service shall submit to the commission mentioned in para.(1), on annual basis, until March 30, a public report on institutional integrity assessment activities, to include:

- a) the number of public entities subject to the institutional integrity assessment;
- the number of performed professional integrity tests
- b) and their results;
- b¹) the number of integrity plans adopted and implemented with success or failed;
- c) the number of challenges related to applied disciplinary sanctions.

(3) The National Security, Defense and Public Order Commission and the Legal, Appointments and Immunity Commission may request, within their competence limits, any additional information on the activity of institutional integrity assessment of public entities and the professional integrity testing of public agents, if they consider that the submitted reports are incomplete.

Article 19¹. Judicial control over the professional integrity testing activity

(1) The endorsement of the professional integrity testing activity, the verification over observance of the endorsement conditions for assessing the results of the professional integrity tests, examining the challenges related to professional integrity test performance and disciplinary sanctions as a result of such testing negative results, as well as the refusal to apply disciplinary sanctions as a result of failed integrity plan shall be under the judicial control, being ensured by the specialized courts.

(2) The selection and appointment of judges from the specialized courts shall be carried out by the Superior Council of Magistrates based on the Regulation approved by this Council after consultation with the National Anticorruption Center. The following rules shall be observed during the selection and appointment of judges:

- a) the selected judges should have unimpaired reputation;
- b) the judges should be appointed in the courts of different jurisdictions, including the level of the courts of appeal.

(3) The list of judges appointed in line with para. (2) shall be public and shall be posted on the official webpage of the Superior Council of Magistrates.

Article 20. Financing the measures to organize the institutional integrity assessment and to perform the professional integrity testing

the institutional integrity assessment and to perform the professional integrity testing, as well as the measures for recording, keeping, and systematizing the information obtained during the tests shall be financed from the state budget within the limit of available means.

Chapter V

FINAL AND TRANSITORY PROVISIONS

Article 21. Final provisions

This law shall come into force from its publication date and be enforced as follows:

a) in case of the employees of the National Anticorruption Center and competences of the Security and Information Service – since the date of publication;

b) in case of the employees of other public entities – after the expiry of the 6-month term since the date of publication.

Article 22. Transitory provisions

(1) Within 10 days from the publication of this law, the public entities falling under it shall inform, under signature, public agents of the possibility to apply professional integrity tests. The refusal to sign shall not exonerate public agents from their disciplinary liability in case of a negative result of the professional integrity test.

(2) The financial resources necessary for the application hereof shall be provided in the budget of the National Anticorruption Center and of the Information and Security Service.

(3) Until the application of this law, the National Anticorruption Center shall verify the public entities regarding the information of public agents according to para. (1), as well as the manner of keeping the gift registers and inappropriate influence denunciation registers, granting them methodological support, if necessary.

(4) The Government of the Republic of Moldova, within 3 months since the enforcement of this law:

a) shall submit to the Parliament proposals on harmonizing the legislation in force with this law;

b) shall make its normative documents compliant hereto and ensure the adoption by the subordinated institutions of the normative documents necessary for the application hereof;

c) shall ensure, from available means, the financial and technical resources necessary for the immediate application hereof.

(5) The National Anticorruption Center and the Security and Information Service shall submit, within 12 months since the coming into force of this law, a report regarding the implementation of the law to the National Security, Defense and Public Order Commission and to the Legal, Appointments and Immunity Commission of the Parliament.

next

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