

Terms of Reference

Job title:	International consultant to support National Anticorruption Center (NAC) of the Republic of Moldova in the elaboration of a study on the proportionality and demotivating character of the sanctions for corruption offences and the appropriateness of establishing specialized anti-corruption courts/panels
Duty Station:	Republic of Moldova, Chisinau
Reference to the project:	Curbing Corruption by building Sustainable Integrity in Moldova
Contract type:	Individual Contract (IC)
Contract duration:	September 2020 - February 2021 (up to 30 working days)
Starting date:	September 2020

Job content

1. BACKGROUND

The goal of the project „Curbing Corruption by Building Sustainable Integrity in Moldova” (further the UNDP Project) is to contribute to achieving a sustainable integrity and anticorruption system in the Republic of Moldova through the strengthened capacities of the public and private sector entities and the civil society for the efficient application and monitoring of national integrity instruments and standards. It will contribute to the progressive implementation of the Sustainable Development Goal 16 that calls for a substantial reduction of corruption and bribery in all their forms and for developing effective, accountable and transparent institutions at all levels. The Project is framed around the National Integrity and Anticorruption Strategy (NIAS) 2017-2020 and responds to the needs of its various actors and stakeholders in addressing the challenges for the effective implementation of NIAS, including insufficient capacities within central and local public authorities to ensure the uniform compliance with anticorruption and integrity standards; lack of mechanisms for enforcing integrity standards in private sector; and weak anticorruption demand-side explained by the limited awareness of men and women on the available anticorruption tools to be used and on the means of protection in the event of denunciation of corruption.

The National Anticorruption Center is the public authority specialized in preventing and combating corruption, corruption-related acts and corruptible deeds and is responsible for the coordination and monitoring of the NIAS implementation. One of the Center's prevention measures is the improvement of the legal framework in line with the anticorruption international standards.

The Republic of Moldova has aligned its' national regulations to the international standards in the area of fighting corruption through different legislative reforms. Nevertheless, certain difficulties are encountered in sanctioning corruption and corruption related acts due to the lack of proportionality and demotivating character of the sanctions for corruption offences.

The current criminal sanctioning system for corruption crimes provides for the application of imprisonment for a period of up to 2 years and up to 15 years and/or applying criminal fines up to

10.000 CU with deprivation of the right to hold certain functions/exercise certain activities for a period of up to 15 years. The fines applied currently have been increased in December 2013.

A [Study of the Court Decisions on Corruption Cases delivered during 2013-2017](#), commissioned by UNDP, revealed a reversed proportionality between the material object of the corruption crime and the fines established as punishments. The statistics analyzed by NAC every year point out the existence of the following trend: the bigger the bribe, the smaller the fine is, and as the bribe increases, the size of the fine becomes less significant.

Taking into account the fact that imprisonment sentence is compulsory only in case of active and passive corruption, as set in the Criminal Code of the Republic of Moldova, and is established alternatively for all the other corruption acts (traffic of influence) and corruption-related acts (abuse of office, exceeding service duties, negligence in service, illicit enrichment, etc.), as well as the fact that courts apply real imprisonment sentences at most in 16% of cases, and in 71% of cases they apply fines, the size of the fine becomes one of the most relevant benchmarks for promoting state policies to deter corruption.

Another relevant criterion for deterring corruption would be the compulsory deprivation of the right to hold certain public offices for persons convicted for corruption for longer periods of time. The existing provisions of the Criminal Code are frequently interpreted as an opportunity to requalify the person convicted for corruption into another office different of the one where the person committed the corruption act for which he/she has been convicted.

The RM-EU Association Agreement provides for *“adopting necessary measures to ensure that corruption acts are punished with effective, proportionate, and deterring criminal sanctions”* and for ensuring efficient enforcement of relevant international legal tools, such as the United Nations Convention against Corruption from 2003, which provides for establishing *“efficient, proportionate and punitive criminal sanctions”*. Hence, in order to obtain results, the fight against corruption cannot be reduced only to carrying out combating activities. It also implies a set of actions meant to discourage perpetration of corruption acts. The capacity of the judicial system to impose dissuasive criminal sanctions plays a major deterring role and is a real evidence of an efficient policy of tolerance to corruption zero.

The second aspect which has proved to be a problem for the application of deterring sanctions in cases of corruption lies in the judicial trial phase. The lack of specialized judges and/or courts to review corruption acts, corruption assimilated and related acts does not allow a rapid change of the judiciary practice in relation to such cases; the corruption cases of resonance are not reviewed with celerity because of the overload of the common-law courts, and the sanctions applied in case of convictions – very rarely may be considered to be deterring.

The Action Plan for the implementation of the NIAS provides for *“Establishing specialized courts/judge panels for examining cases of corruption acts and corruption-related acts and ensuring the specialized courts/judge panels for examining cases of corruption acts and corruption-related acts with sufficient human, technical, and financial resources”*. As a result of determining certain challenges encountered in implementing the respective action, the monitoring body of the NIAS has decided that it is necessary to carry out a detailed analysis regarding the relevance and appropriateness of establishing specialized courts/judge panels to examine cases of corruption acts and corruption-related acts in the Republic of Moldova, considering the current legal and contextual aspects.

In this context, to ensure *effective, proportionate, and deterring criminal sanctions for corruption cases and high efficiency and expertise during the judicial phase*, the UNDP Project seeks to contract an International Consultant, who working in team with a national consultant, will carry out a comprehensive study on the conformity of the national normative framework with the international anticorruption standards, norms and good practice related to the framework of the sanctions for

corruption offences and specialization of anticorruption judges/courts taking into account specific context of the Republic of Moldova.

2. OBJECTIVE AND EXPECTED OUTPUTS

Main objective/output of the assignment: to carry out a comprehensive study on the conformity of the national normative framework with the international anticorruption standards, norms and good practice related to the framework of the sanctions for corruption offences and specialization of anticorruption judges/courts, which will include two chapters:

- I. Analysis of the conformity of the national normative framework with the international anticorruption standards, norms and good practice related to the framework of the sanctions for corruption offences;
- II. Analysis regarding the relevance and appropriateness of establishing specialized courts/judge panels to examine cases of corruption acts and corruption-related acts in the Republic of Moldova, taking into account specific context of the Republic of Moldova;

and to provide concrete recommendations for amending the national legal framework to ensure the implementation and observance of the international anticorruption standards and good practice related to the proportionality and demotivating character of the sanctions for corruption offences and the appropriateness of establishing specialized anti-corruption courts/panels.

To deliver the outputs the International Consultant has to carry out the following tasks and activities in the course of work:

- Perform the analysis/audit of the national legal framework in force in the area of criminal law and contravention law in relation to the sanctions applied for corruption and corruption related offences (Criminal Code No. 985/2002, Criminal Procedure Code No. 122/2003, Contravention Code No. 218/2008, Integrity Law No. 82/2017);
- Assess the compliance of the national anticorruption system, including the legislative acts, normative documents and policies, with the UNCAC and other international standards in relation to sanctions applied for corruption acts;
- Provide well-reasoned conclusions regarding the following:
 - are the sanctions applied for corruption acts in the Republic of Moldova deterring or not;
 - is it necessary or not to increase the sanctions applied for corruption acts;
 - to provide recommendations for amending legal provisions so as to increase/decrease the sanctions applied for corruption acts.
- Carry out a normative and contextual analysis on the examining cases of corruption acts in courts and on the appropriateness of establishing specialized anti-corruption courts/panels, taking into account specific context of the Republic of Moldova;
- Provide concrete recommendations for amending the national legal framework to ensure the implementation and observance of the international anticorruption standards and good practice related to the proportionality and demotivating character of the sanctions for corruption offences;
- Provide concrete recommendations on the appropriateness of establishing specialized anti-corruption courts/panels in the Republic of Moldova;
- Participate in the presentation of the results of the study in a public presentation event organized by the UNDP and NAC*.

*If the COVID19 pandemic situation will improve, the Consultant will travel to Moldova to participate in the presentation of the results of the study. Alternately, the consultant will connect

to the presentation via on-line tools.

To carry out the analysis the Service provider will apply but not limited to the following tools:

- Desk review of the relevant official (legal and normative documents, official reports, statistics, etc.) and alternative documents (reports by the CSOs, relevant international organizations, etc.);
- In-depth interviews/focus group discussions/ with relevant authorities, civil society organizations, international organizations, etc. Due to COVID19 context, all interviews/discussions will be organized and held via electronic tools;
- Any alternative tools suggested by the Consultant.

The international consultant will work in a team with a national consultant. The national consultant will provide both substantive (gather background documentation, inputs to the study) and logistical assistance (arranging interviews, providing brief translation and interpreting, etc.).

The Final Study should contain at least the following:

- Executive summary;
- Introduction and methodological chapter explaining the applied methodological tools;
- Overall results of the analytical study (main report contains two chapters on the above mentioned subjects: sanctions for corruption offences and specialized courts/judge panels to examine cases of corruption);
- Conclusions and recommendations for amending the national legal framework to ensure the implementation and observance of the international anticorruption standards and good practice related to the proportionality and demotivating character of the sanctions for corruption offences and the appropriateness of establishing specialized anti-corruption courts/panels.

The entire assignment is to be finalized not later than 28 February, 2021.

3. KEY DELIVERABLES AND TENTATIVE TIMETABLE

<i>Deliverables</i>	<i>Tentative timeframe</i>
The detailed plan of activities and methodology for conducting the study submitted and validated with the Project and NAC	By 20 September 2020 Up to 3 working days
Draft study on the conformity of the national normative framework with the international anticorruption standards, norms and good practice related to the framework of the sanctions for corruption offences and specialization of anticorruption judges/courts submitted	By 25 November 2020 Up to 20 working days
Feed-back on the draft study collected from the main stakeholders within the validation meetings	
Final study on the conformity of the national normative framework with the international anticorruption standards, norms and good practice related to the framework of the sanctions for	By 10 December 2020 Up to 5 working days

corruption offences and specialization of anticorruption judges/courts and recommendations for amending the national legal framework to ensure the implementation and observance of the international anticorruption standards and good practice related to the proportionality and demotivating character of the sanctions for corruption offences and the appropriateness of establishing specialized anti-corruption courts/panels submitted and approved by the UNDP Project and NAC	
Final Study presented in a public event organized by UNDP	By 28 February 2021 Up to 2 working days

4. INSTITUTIONAL ARRANGEMENTS

This is a part-time consultancy. The consultant will work in a team with a national consultant and in close collaboration with the delegated staff of the National Anticorruption Centre. The Consultant will work under the overall guidance and direct supervision of the UNDP Project Manager. The timeframe for the work of Consultant is planned for September 2020 – February 2021.

5. FINANCIAL ARRANGEMENTS

Payment will be disbursed in two or three instalments upon submission and approval of deliverables, and certification by UNDP Moldova Project Manager that the services have been satisfactorily performed.

6. QUALIFICATIONS AND SKILLS REQUIRED

I. Academic Qualifications:

- Master's Degree or equivalent (5 years of University studies) in Law;

II. Years and sphere of experience:

- At least 7 years of progressive international experience in the field of, research and/or consultancy in prevention and fight against corruption in the region of Europe and CIS;
- At least 5 years of proven professional experience involving legal drafting and analysis of normative acts related to justice and/or anticorruption;

III. Competencies:

- Excellent knowledge of the international standards in the field of fight and prevention of corruption demonstrated by previous assignments;
- Experience related to the prosecution and/or judicial examination of corruption cases is a strong advantage;
- Demonstrated experience on the assessment of the effectiveness of implementation of specific legislation in the justice and/or anticorruption sectors related to criminal procedures will be a strong advantage;
- Previous work with UNDP and/or other development partners will be an asset;
- Strong communication and teamwork/coordination skills demonstrated by previous assignments;
- Excellent analytical and report-writing skills demonstrated by previous assignments;
- Proficiency in English, knowledge of Russian or Romanian will be an advantage.

IV. Personal qualities:

- Proven commitment to the core values of the United Nations; in particular, is respectful of differences of culture, gender, religion, ethnicity, nationality, language, age, HIV status, disability, and sexual orientation, or other status;
- Responsibility, creativity, flexibility and punctuality, ability to meet deadlines

The UNDP Moldova is committed to workforce diversity. Women, persons with disabilities, Roma and other ethnic or religious minorities, persons living with HIV, as well as refugees and other non-citizens legally entitled to work in the Republic of Moldova, are particularly encouraged to apply.

7. DOCUMENTS TO BE INCLUDED WHEN SUBMITTING THE PROPOSALS:

Interested individual consultants must submit the following documents/information to demonstrate their qualifications:

- Offeror's Letter confirming Interest and Availability;
- Proposal: explaining why they are the most suitable for the work including previous experience in similar Projects (please provide brief information on each of the above qualifications, item by item);
- Financial proposal (in USD, specifying a total requested amount per working day, including all related costs, e.g. fees, travel costs, phone calls etc. **The travel costs to Moldova to participate in the presentation of the results of the study will be indicated separately and will be covered only if the travel will be allowed in the COVID19 context**);
- Personal CV and at least 3 references.

Note: Please, refer to the Individual Procurement Notice of this recruitment for a more detailed information on the application and selection process.