



TERMS OF REFERENCE

- A. Job Title:** **International consultant** on legislation and rules regarding whistleblowing and protection of whistleblowers
- B. Duty Station:** Chisinau, Republic of Moldova
- C. Project reference:** Strengthening the corruption prevention and analysis functions of the National Anticorruption Center (NAC)
- D. Contract type:** Individual Contract (IC)
- E. Duration of assignment:** March – April 2016

F. Project description

Corruption remains a major issue in Moldova. Various international rankings testify the high levels of perceptions of corruption. The Government, acknowledging the need to fight corruption, adopted the National Anticorruption Strategy (NAS) in 2011¹, which is implemented by two years of action plans². Anticorruption measures strongly feature in other major strategic policy documents, such as Moldova 2020,³ Justice Sector Reform Strategy (2011 – 2016) and its Action Plan⁴ and the National Action Plan for the implementation of the EU-Moldova Association Agreement (AA).⁵

National Anticorruption Center (NAC) has a well-defined mandate for the prevention of corruption and is the institution responsible for the coordination of the implementation of the National Anticorruption Strategy (2011 - 2015). While corruption prevention and analysis are priorities for NAC according to its Strategic Plan, the capacities of the institution in these areas are still underdeveloped for the appropriate implementation of the function as highlighted also in the 2014 NAC Annual Report.

In this context, the UNDP Project seeks to catalyze the emergence of the strongest possible national anticorruption institution, the *National Anticorruption Centre (NAC) and to strengthen its corruption prevention and analysis functions* in order to maximize their impact and also to help NAC in the implementation of the NAS.

Background:

Although corruption is a major challenge for a sustainable development in Moldova and fighting corruption is declared one of the main government priorities, Moldova lacks a comprehensive law on protection of whistleblowers, after an unsuccessful attempt to pass such a law in 2008.

The National Anti-corruption Strategy 2011-2015, currently in force, provides for the encouragement of the

¹ Parliamentary Decision 154, of 21 July 2011, to adopt the National Anti-Corruption Strategy 2011-2015.

http://cna.md/sites/default/files/snadoc/national_anti-corruption_strategy_2011-2015_republic_of_moldova.pdf

² Parliamentary Decision 76, of 16.05.2014 to approve the Action Plan for 2014–2015 to implement the National Anti-Corruption Strategy 2011–2015.

http://cna.md/sites/default/files/snadoc/plan_2014-2015_eng_doc

³ <http://cancelaria.gov.md/lib.php?l=en&idc=435&nod=1&>

⁴ <http://www.justice.gov.md/#idc=420&>

⁵ <http://www.mfa.gov.md/implementarea-aa/>

corruption disclosure, including strengthening the efficiency of hotlines by setting clear responsibilities of the employees regarding the hotline activity; creating mechanisms for not disclosing the identity and protecting the persons who report to the competent authorities regarding the potential acts of corruption; regulating the obligation of examining anonymous petitions which contain information about the alleged corruption acts, etc. One of the indicators for this measure included adopting of law regarding the protection of the informers.

In 2013 the "Framework Regulation on Whistleblowers" was passed by the government. It envisages creating a system to provide civil servants with opportunities to report malpractice within public authorities and protect them from retaliation. Public servants may report acts of corruption and violation of conflict of interest and asset declaration procedures. Results of reporting are to be sent to the whistleblower within 30 days. The framework does not provide for legal protection for employees of private companies.

The framework requires all public authorities to set up internal regulation on whistleblowing. According to the Report of the Regional Anti-Corruption Initiative, 92 percent, corresponding to about 29 authorities, have adopted internal regulations. However, thus far, there is no system to track whistleblower reports. According to the same report, based on the communication with NAC, there is no mechanism to collect statistics of reports made to public institutions. The government does not track whistleblower cases reported according to the law on civil servants.⁶

According to the existing legislation, law enforcement authorities have internal security departments to which people can report corruption. By 2009, nearly all central and many local public institutions had set up hotlines for reporting misconduct. In October 2013 a law was passed, providing for the establishment of anti-corruption hotlines by public authorities at three levels: a free, 24-hour hotline managed by NAC; anti-corruption hotlines by public authorities and institutional information lines by public authorities. However, NGOs active in the field of anticorruption report certain drawbacks in functioning of anti-corruption hot-lines.

According to the *The Action plan for the implementation of the Justice Sector Reform Strategy for the years 2011 -2016*, adopted as a precondition for signing the EU-Moldova Association Agreement, a national whistleblower system is envisaged to be set by 2016. It provides for strengthening the system of whistleblowing (inside and outside the system) by 2016 as a measure for the Strategic Direction of "Developing a culture of intolerance towards the phenomenon of corruption through selfgovernance bodies from the justice sector". The measure includes developing a study on whistleblowing; developing and adopting a law on amending regulatory framework; creating and implementing the mechanism of functioning of whistleblowing system.

Based on the aforementioned strategic documents and also priorities of the government program, NAC initiated drafting a comprehensive law on whistleblowing and protection of whistleblowers.

Strengthening the corruption prevention and analysis functions of the National Anticorruption Center (NAC) project implemented by UNDP in partnership with the NAC and funded by the Government of Norway, intends to engage an international consultant to provide analytical support and expertise to NAC in drafting a comprehensive law on whistleblowing and protection of whistleblowers and provide a two-days training on international standards and best practices in the field for the staff of the NAC Prevention Division.

G. Objective:

The main objective of the assignment is to offer consultancy to the National Anticorruption Center in drafting a comprehensive law on whistleblowing and protection of whistleblowers and provide a two-days training on international standards and best practices in the field for the staff of the NAC Prevention Division.

H. Strategy:

⁶http://rai-see.org/wp-content/uploads/2015/07/Whistleblower_Protection_in_SEE.pdf

The assignment will consist of two missions. The first mission (tentatively scheduled for 9 - 18 March 2016) will involve the review of the draft law on whistleblowing drafted by NAC; review of the relevant background legislation and materials; in-depth interview involving relevant stakeholders from NAC, Prosecutor's Office, judiciary, Non-discrimination Council, etc. It may also include interviews with key external partners, civil society experts and other relevant stakeholders to discuss possible solutions based on their familiarity and knowledge of the subject.

During the first mission the consultant will also provide a two-days training (4 hours per day) on international standards and best practices in the field for the staff of the NAC Prevention Division. Period of the training during the mission will be agreed prior to setting the mission's agenda.

The second mission, which will be undertaken in two weeks after the first mission, will involve the presentation of the final draft law and argumentation note to relevant stakeholders, including participation together with NAC in public debates to discuss the draft law and its validation.

Scope of work and expected outputs:

The consultancy will include:

- I. Legal expertise
 - expertise of the draft law on whistleblowing drafted by NAC, against the best international practices in the field;
 - assisting NAC in drafting the draft law and argumentation note to the draft law, based on a desk review of the relevant national legislation and discussions with the main stakeholders
 - assisting NAC in presentation of the draft law to the main stakeholders, including public debates

The expertise and recommendations will focus on:

- Effective legislative framework and mechanism for offering the status of whistleblower and protection of whistleblowers;
- Optimal institutional framework to insure protection of whistleblowers at all levels;
- Optimal competences of the involved institutions;
- Necessary technical assistance in setting up an efficient system;

- II. Two-days training (4 hours each day) for NAC Prevention Division staff (20-25 persons) on international standards and best practices in the field of whistleblowing and protection of whistleblowers.

I. Deliverables:

#	Deliverable	Deadline
1.	Activity Plan for the assignment and agenda of the training for NAC	2 March 2016
2.	Final Draft Law on whistleblowing and protection of whistleblowers and the argumentation note to the Law submitted	1 April 2016 (including 7 working days mission)
3.	Draft law validated with the main stakeholders	15 April 2016 (during 5 working days mission)
4.	Final report on the assignment describing how the work was done, including the list of people met, capacity development assistance provided to NAC, public discussions and presentations, etc., submitted	19 April 2016

Deliverables and timeline can be amended or specified for the purpose of the assignment, depending on the contract signing date.

Payment will be made in one or two instalments upon the successful completion of the tasks assigned.

NOTE: the consultant will estimate required amount of working days, including 2 missions to Chisinau (a total of 12 working days) and will present a lump sum budget in financial offer.

J. Organizational Setting:

This is a part-time consultancy. The expert will work in close collaboration with the management and staff of the National Anticorruption Centre. The expert will work under direct supervision of UNDP Project manager for administrative issues.

K. Inputs:

The National Anticorruption Centre and UNDP Moldova will provide the expert with the necessary information and materials for the fulfilment of tasks and will provide support with the facilitation of meetings and translation/interpretation services where necessary.

L. Qualifications and skills required:

I. Academic Qualifications:

- Master's Degree or equivalent (5-year university education) in Law, International Public Law or other relevant field

II. Years and sphere of experience:

- At least 5 years of Professional experience in the field of whistleblowing and protection of whistleblowers

III. Competencies:

- Proven extensive knowledge on the subject of whistleblowing and best practices of the protection of whistleblowers;
- Experience in working with anticorruption agencies/ judiciary/ prosecution and/or other relevant institutions will be a strong asset;
- Extensive demonstrated experience in drafting strategic documents, legislation, other normative acts, related to whistleblowing;
- Demonstrated international experience/consultancy in the field of whistleblowing;
- Experience in conducting training sessions on international standards and practices in the field of whistleblowing;
- Experience in implementing similar assignments in the newer EU Member or Candidate States or CIS region will be a strong asset;
- Effective communication and strong analytical skills;
- Initiative, creativity/ resourcefulness;
- Previous successful experience of working with UN agencies is an advantage;
- Knowledge of English; knowledge of Romanian or Russian languages will be an asset

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;
- Flexibility;
- Punctuality.